



This is a digital copy of a book that was preserved for generations on library shelves before it was carefully scanned by Google as part of a project to make the world's books discoverable online.

It has survived long enough for the copyright to expire and the book to enter the public domain. A public domain book is one that was never subject to copyright or whose legal copyright term has expired. Whether a book is in the public domain may vary country to country. Public domain books are our gateways to the past, representing a wealth of history, culture and knowledge that's often difficult to discover.

Marks, notations and other marginalia present in the original volume will appear in this file - a reminder of this book's long journey from the publisher to a library and finally to you.

### Usage guidelines

Google is proud to partner with libraries to digitize public domain materials and make them widely accessible. Public domain books belong to the public and we are merely their custodians. Nevertheless, this work is expensive, so in order to keep providing this resource, we have taken steps to prevent abuse by commercial parties, including placing technical restrictions on automated querying.

We also ask that you:

- + *Make non-commercial use of the files* We designed Google Book Search for use by individuals, and we request that you use these files for personal, non-commercial purposes.
- + *Refrain from automated querying* Do not send automated queries of any sort to Google's system: If you are conducting research on machine translation, optical character recognition or other areas where access to a large amount of text is helpful, please contact us. We encourage the use of public domain materials for these purposes and may be able to help.
- + *Maintain attribution* The Google "watermark" you see on each file is essential for informing people about this project and helping them find additional materials through Google Book Search. Please do not remove it.
- + *Keep it legal* Whatever your use, remember that you are responsible for ensuring that what you are doing is legal. Do not assume that just because we believe a book is in the public domain for users in the United States, that the work is also in the public domain for users in other countries. Whether a book is still in copyright varies from country to country, and we can't offer guidance on whether any specific use of any specific book is allowed. Please do not assume that a book's appearance in Google Book Search means it can be used in any manner anywhere in the world. Copyright infringement liability can be quite severe.

### About Google Book Search

Google's mission is to organize the world's information and to make it universally accessible and useful. Google Book Search helps readers discover the world's books while helping authors and publishers reach new audiences. You can search through the full text of this book on the web at <http://books.google.com/>



**The Riverside Biographical Series**

**NUMBER 7**

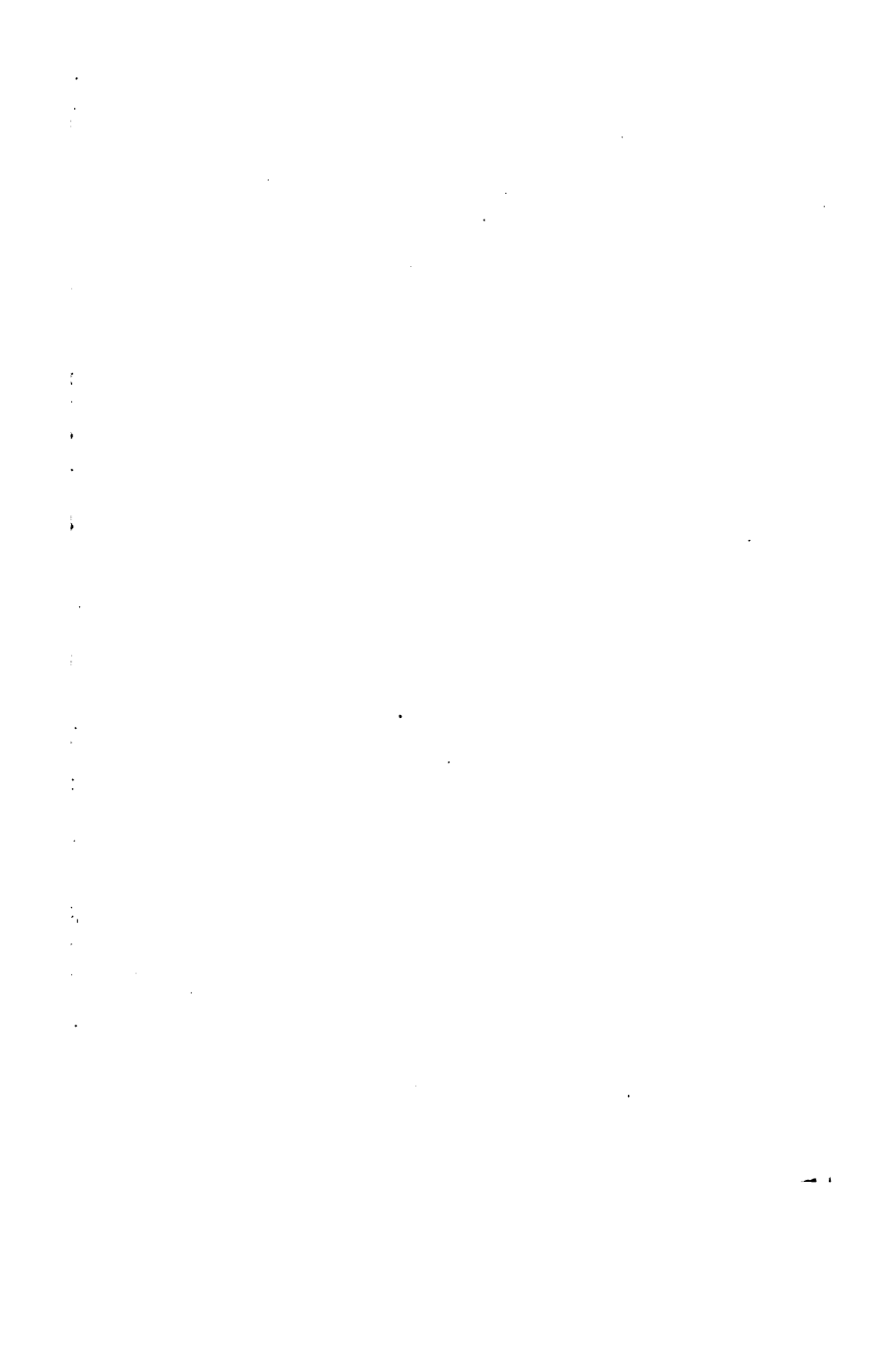
**JOHN MARSHALL**

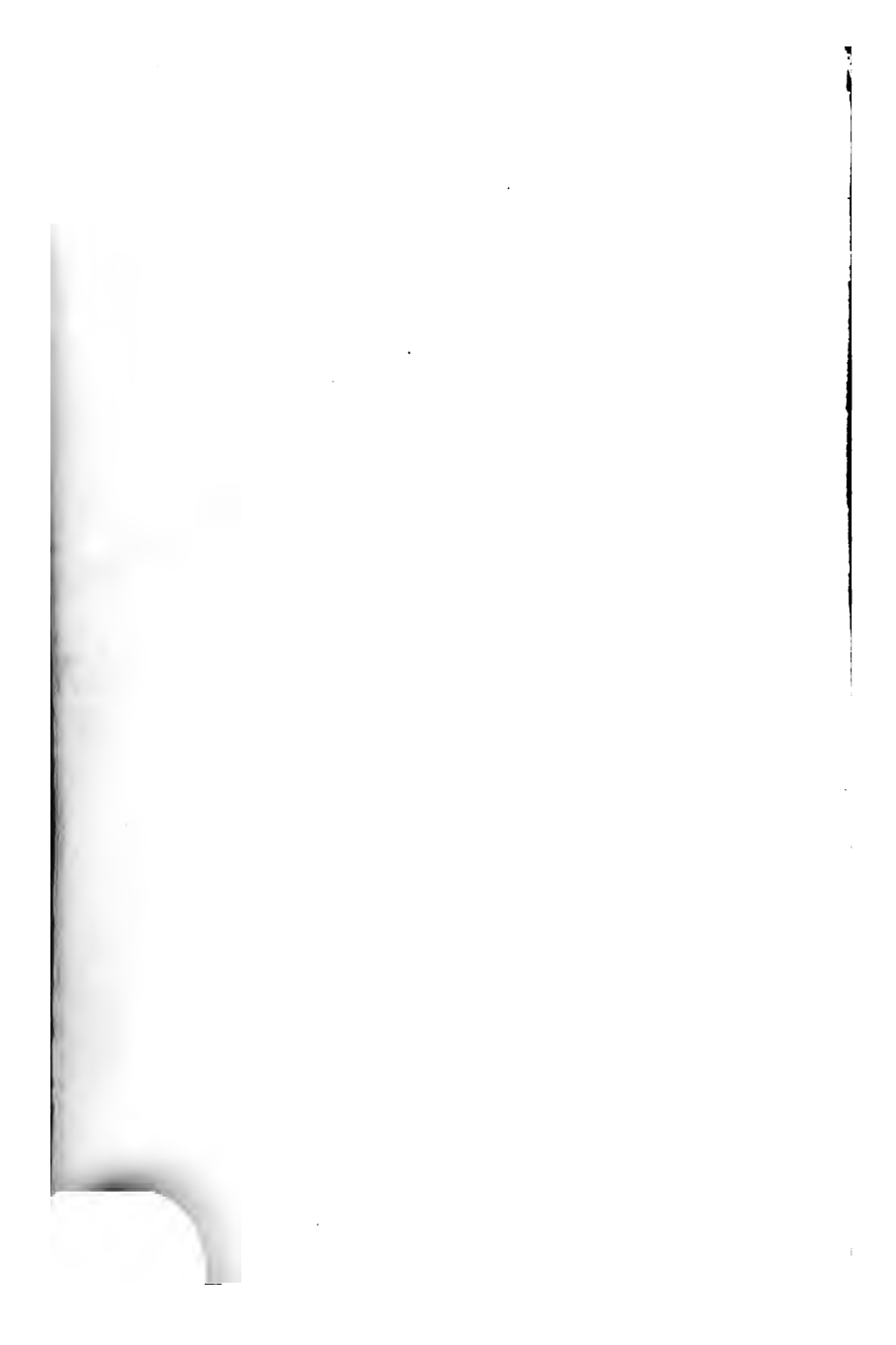
**BY**

**JAMES BRADLEY THAYER**









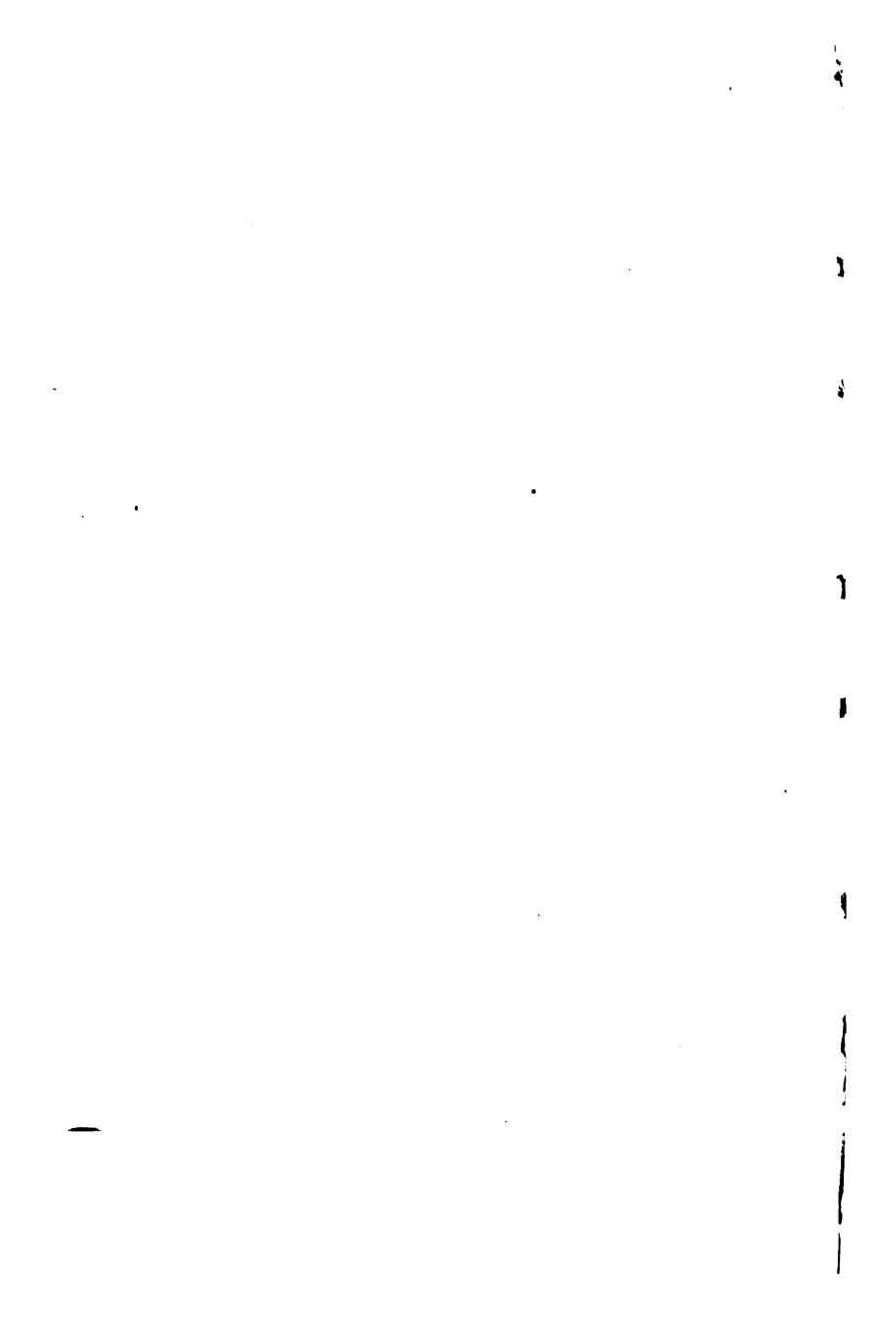
**The Riverside Biographical Series**

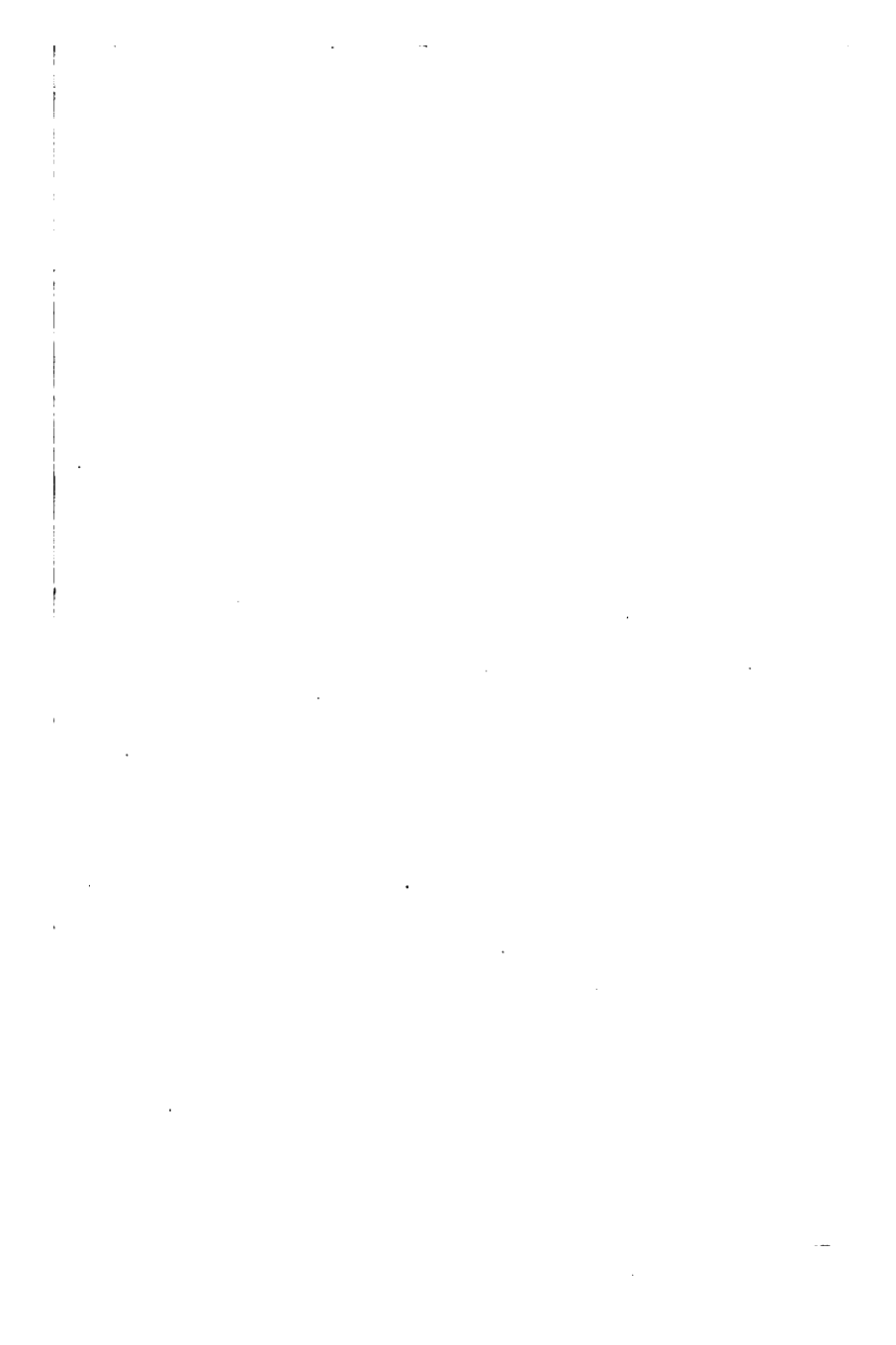
**NUMBER 7**

**JOHN MARSHALL**

**BY**

**JAMES BRADLEY THAYER**







*Marshall*

# JOHN MARSHALL

C7

BY

JAMES BRADLEY THAYER

0



BOSTON AND NEW YORK  
HOUGHTON, MIFFLIN AND COMPANY  
The Riverside Press, Cambridge  
1901

COPYRIGHT, 1901, BY JAMES BRADLEY THAYER

ALL RIGHTS RESERVED

*Rec. Oct. 13, 1905.*



## **PREFATORY NOTE**

**THE writer has drawn with entire freedom from an address delivered by him at Cambridge on February 4, 1901, before the Harvard Law School and the Bar Association of the City of Boston, and from an article on John Marshall in the Atlantic Monthly for March, 1901.**

**J. B. T.**

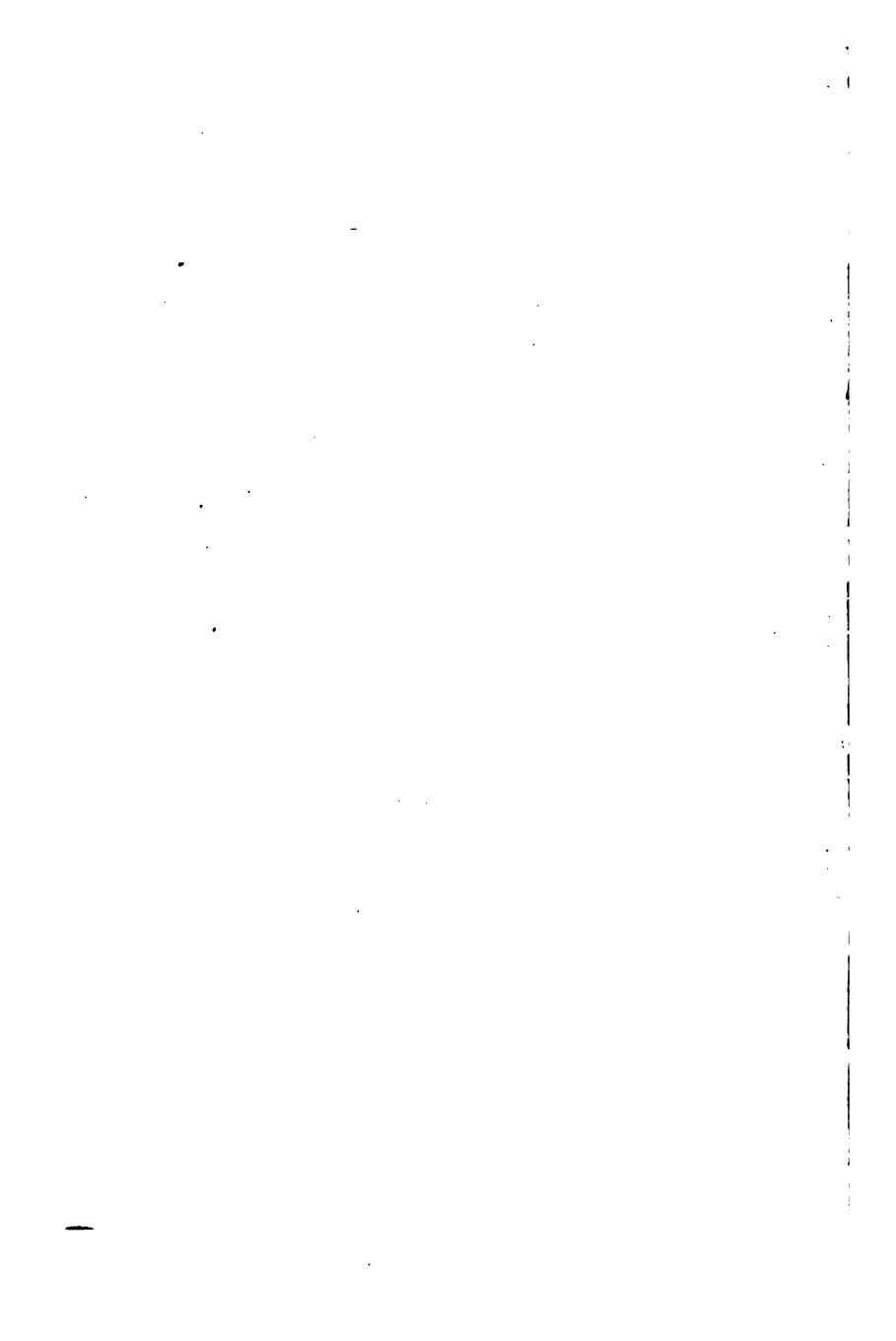
**CAMBRIDGE, March 30, 1901.**



## CONTENTS

CHAP.	PAGE
I. HIS LIFE BEFORE BECOMING CHIEF JUSTICE; HIS PERSONAL CHARACTERISTICS .	1
II. ARGUMENTS AND SPEECHES; LIFE OF WASHINGTON; RELATIONS WITH JEFFERSON . . . . .	39
III. THE BEGINNINGS OF THE CHIEF JUSTICE'S CAREER; AMERICAN CONSTITUTIONAL LAW; MARBURY V. MADISON . . .	54
IV. MARSHALL'S CONSTITUTIONAL OPINIONS .	82
V. THE WORKING OF OUR SYSTEM OF CONSTITUTIONAL LAW . . . . .	102
VI. LETTERS OF MARSHALL . . . . .	111
VII. MARSHALL AS A CITIZEN AND A NEIGHBOR	123
VIII. HIS LAST DAYS . . . . .	147

*The portrait is from a miniature by St. Mémin.*



# JOHN MARSHALL

---

## CHAPTER I

### HIS LIFE BEFORE BECOMING CHIEF JUSTICE ; HIS PERSONAL CHARACTERISTICS

IN beginning his "Life of Washington," Chief Justice Marshall states that Washington was born in 1732, "near the banks of the Potowmac," in Westmoreland County, Virginia; mentions his employment by Lord Fairfax, the proprietor of the Northern Neck, as surveyor of his estates in the western part of that region; and adds that, in the performance of these duties, "he acquired that information respecting vacant lands, and formed those opinions concerning their future value, which afterwards contributed greatly to the increase of his private fortune."

Thomas Marshall, the father of the Chief Justice, two years older than Washington, was also born in Westmoreland County, was a schoolmate of Washington, served with him both as surveyor of the Fairfax estates, and soon afterwards, as an officer in the French and Indian wars; and he, too, as time passed, found like advantage from his experience as a surveyor.

In 1753, Thomas Marshall was made agent of Lord Fairfax in the management of his estates. In the next year, he married Mary Isham Keith, daughter of a Scotch clergyman, whose wife was a descendant of William Randolph, of Turkey Island, the ancestor of the famous Virginia family of that name. Their son, John Marshall, the oldest of fifteen children, was born on September 24, 1755, in what was afterwards Fauquier County, at a little settlement then known as Germantown, — now Midland, on the Southern Railroad, a few miles south of Manassas. That was the year of Braddock's defeat, and Thomas Marshall, like Washington, was in the service, as an officer.

### BEFORE BECOMING CHIEF JUSTICE 3

In Marshall's early childhood, his father's household, situated in a frontier county, must have been agitated with the dreadful rumors, anxieties, and terrors of the troubles with the French and Indians. "So late," he tells us in the "Life of Washington," "as the year 1756, the Blue Ridge was the northwestern frontier; and [Virginia] found immense difficulty in completing a single regiment to protect the inhabitants from the horrors of the scalping-knife, and the still greater horrors of being led into captivity by savages who added terrors to death by the manner of inflicting it." It was not until two years later that the capture of Fort Duquesne relieved Virginia from the frightful ravages that laid waste the region just west of the Blue Ridge.

When John Marshall was ten years old or more, his father left the level country and poor soil of eastern Fauquier, for the higher and more fertile region in the western part of the county, just under the Blue Ridge. At Midland all they can show you now, relating to Marshall, is a small, rude heap

of bricks and rubbish, — what is left of the house where he was born ; and children on the farm reach out to you a handful of the bullets with which that sacred spot and the whole region were thickly sown, before a generation had passed, after his death.

Marshall's education was got from his father, from such teachers as the neighborhood furnished, and, for about a year, at a school in Westmoreland County, where his father and George Washington had attended, and where James Monroe was his own schoolmate. But most he owed to his father, — a man of good stock, of enterprise, experience, strong character and sense, himself of no mean education, — who, personally, took great pains with the training of his children. Marshall admired his father, and declared him to be a far abler man than any of his sons. From him and the teachers provided for him his son got a good knowledge of English history, literature, and poetry, and a fair acquaintance with the classics.

All Marshall's later youth was passed in



the mountain region of Fauquier County, under the Blue Ridge. Judge Story declared that it was to the hardy, athletic habits of his youth among the mountains, operating, we may well conjecture, upon a happy physical inheritance, "that he probably owed that robust and vigorous constitution which carried him almost to the close of his life with the freshness and firmness of manhood."

The house that Marshall's father built at Oakhill is still standing, an unpretending, small, frame building, having connected with it now, as a part of it, another house built by Marshall's son Thomas. At one time the farm comprised an estate of six thousand acres.<sup>1</sup> Since 1865 it has passed out of the hands of the family. It is beautifully placed on high, rolling ground, looking over a great stretch of fertile country, and along the chain of the Blue Ridge, close by. To this

<sup>1</sup> The Chief Justice seems to have inherited and accumulated a considerable estate. By his will he gave to each of his grandsons named John a thousand acres of land. *The Green Bag*, viii. 4. He also had been a surveyor. *Ib.* 480.

region, where his children and kindred lived, about a hundred miles from Richmond, Marshall delighted to resort in the summer, all his life long. In the autumn of 1807, after the Burr trial, he writes to a friend, "The day after the commitment of Colonel Burr for a misdemeanor, I galloped to the mountains." "I am on the wing," he tells Judge Story in 1828, "for my friends in the upper country, where I shall find rest and dear friends, occupied more with their farms than with party politics."

When Marshall was about eighteen years old he began to study Blackstone; but he quickly dropped it, for the troubles with Great Britain thickened, and, like his neighbors, he prepared for fighting.

He seems to have found a copy of Blackstone in his father's house, as he had found there much other sterling English literature. It was then a new book, but already famous. Published in England in 1765-69, a thousand copies had been taken in this country;<sup>1</sup> and just now the first American edition was

<sup>1</sup> Hammond's Blackstone, vol. i., pp. viii. xxv.

## BEFORE BECOMING CHIEF JUSTICE 7

out (Philadelphia, 1771-72), in which the list of subscribers, headed by the name of "John Adams, barrister at law, Boston," had also that of "Captain Thomas Marshall, Clerk of Dunmore County." Dunmore County, now Shenandoah, was then a very new county, just over the Blue Ridge from Fauquier; and it is believed that there was but one Captain Thomas Marshall in those parts.

The earliest personal description of Marshall that we have belongs to this period. It is preserved in Horace Binney's admirable address at Philadelphia, after Marshall's death. He gives it from the pen of an eyewitness, a "venerable kinsman" of Marshall. News had come, in May, 1775, of the fighting at Concord and Lexington. The account shows us the youth, as lieutenant, drilling a company of soldiers in Fauquier County: —

"He was about six feet high, straight, and rather slender, of dark complexion, showing little if any rosy red, yet good health, the outline of the face nearly a cir-

cle, and within that, eyes dark to blackness,<sup>1</sup> strong and penetrating, beaming with intelligence and good nature; an upright forehead, rather low, was terminated in a horizontal line by a mass of raven-black hair, of unusual thickness and strength. The features of the face were in harmony with this outline, and the temples fully developed. The result of this combination was interesting and very agreeable. The body and limbs indicated agility rather than strength, in which, however, he was by no means deficient. He wore a purple or pale blue hunting-shirt, and trousers of the same material fringed with white. A round black hat, mounted with the buck's tail for a cockade, crowned the figure and the man. He went through the manual exercise by word and motion, deliberately pronounced and performed in the presence of the company, before he required the men to imitate him; and then proceeded to exercise them with the most perfect temper. . . .

<sup>1</sup> Marshall's eyes are often spoken of as black. In fact, they were brown.

"After a few lessons the company were dismissed, and informed that if they wished to hear more about the war, and would form a circle about him, he would tell them what he understood about it. The circle was formed, and he addressed the company for something like an hour. He then challenged an acquaintance to a game of quoits, and they closed the day with foot-races and other athletic exercises, at which there was no betting."

"This," adds Mr. Binney, "is a portrait, to which in simplicity, gayety of heart, and manliness of spirit, in everything but the symbols of the youthful soldier, and one or two of those lineaments which the hand of time, however gentle, changes and perhaps improves, he never lost his resemblance."

Marshall accompanied his father to the war as a lieutenant, and in a year or two became a captain. In leaving the father here, it may be said that three of his sons were with him in the war, and that he himself served with gallantry and distinction as a colonel. In 1780, he was at the South

with General Lincoln, and being included in the surrender of that officer and on parole, visited Kentucky, not yet a State. After a few years he removed there with the younger part of his family, leaving Oakhill, as it seems, in the hands of his son John. He died in Kentucky in 1806, having survived to witness the successive honors of his son culminate in his becoming Chief Justice of the United States.<sup>1</sup>

<sup>1</sup> It may be added that Thomas Marshall, father of the Chief Justice, was the son of John Marshall, called "of the Forest," from the name of his place in Westmoreland County. Of this John it is said, in a little autobiography of the Chief Justice of some five hundred words, preserved in Mr. Justice Gray's valuable oration at Richmond, on February 4, 1901, that his "parents migrated from Wales and settled in the county of Westmoreland in Virginia." The will of "Thomas Marshall, carpenter," proved May 31, 1704, describing himself as of Westmoreland County, is printed in the *Virginia Magazine of History*, ii. 343, 344; and it is there stated in a note that this Thomas "was the first of his race in America." On the other hand, we are told by an intelligent writer in Appleton's *Cyclopædia of American Biography*, and elsewhere, that the father of "John of the Forest" was Thomas, born in Virginia in 1655, who died in 1704; and that it was his father, John, a captain of cavalry in the service of Charles I., who emigrated to Virginia about 1650.

It was in the autumn of 1775 that Marshall, as lieutenant in a regiment of minute-men, of which his father was major, marched down through the country to the seaboard to resist Lord Dunmore's aggressions. They were clothed, we are told, in green homespun hunting-shirts, having the words "Liberty or Death" in large letters on the breast, with bucks' tails in their hats, and tomahawks and scalping-knives in their belts. The enemy at Norfolk feared, it is said, for their scalps, but they lost none.<sup>1</sup>

He was thus in the first fighting in Virginia, in the fall of 1775, at Norfolk; afterwards he served in New Jersey, Pennsylvania, and New York; and again in Virginia toward the end of the war. He was at Valley Forge, in the fighting at the Brandywine, Germantown, Monmouth, Stony Point, and Paulus Hook, between 1776 and 1779. He served often as judge advocate, and in this way was brought into personal relations with Washington and Hamilton. A fellow officer and messmate describes him,

<sup>1</sup> Flanders, *Lives of the Chief Justices*, ii. 291.

during the dreadful winter at Valley Forge, as neither discouraged nor disturbed by anything, content with whatever turned up, and cheering everybody by his exuberance of spirits and "his inexhaustible fund of anecdote." He was "idolized by the soldiers and his brother officers."

President Quincy gives us a glimpse of him at this period, as he heard him described at a dinner with John Randolph and a large company of Virginians and other Southern gentlemen. They were talking of Marshall's early life and his athletic powers. "It was said in them that he surpassed any man in the army; that when the soldiers were idle at their quarters, it was usual for the officers to engage in matches of quoits, or in jumping and racing; that he would throw a quoit farther, and beat at a race any other; that he was the only man who, with a running jump, could clear a stick laid on the heads of two men as tall as himself. On one occasion he ran in his stocking feet with a comrade. His mother, in knitting his stockings, had the legs of blue yarn and the



heels of white. This circumstance, combined with his uniform success in the race, led the soldiers, who were always present at these races, to give him the sobriquet of 'Silver-Heels,' the name by which he was generally known among them."

Toward the end of 1779, owing to the disbanding of Virginia troops at the end of their term of service, he was left without a command, and went to Virginia to await the action of the legislature as to raising new troops. It was a fortunate visit; for at Yorktown he met the young girl who, two or three years later, was to become his wife; and he was also able to improve his leisure by attending, for a few months in the early part of 1780, two courses of lectures at the college, on law and natural philosophy. This was all of college or university that he ever saw; but later, from several of them, he received their highest honors. In 1802 the college of New Jersey (Princeton, where his oldest son, Thomas, was to graduate in 1803), in 1806, Harvard, and in 1815, the University of Pennsylvania, made him

doctor of laws.<sup>1</sup> Marshall's opportunity for studying law, under George Wythe, at William and Mary College, seems to have been owing to a change in the curriculum, made, just at that time, at the instance of Jefferson, governor of the State, and, in that capacity, visitor of the college. The chair of divinity had just been abolished, and one of law and police, and another of medicine, were substituted. On December 29, 1779, the faculty voted that, "for the encouragement of science, a student, on paying annually 1000 pounds of tobacco, shall be entitled to attend any school of the following professors, viz.: of Law and Police; of Natural Philosophy and Mathematics," etc. Marshall chose the two courses above named; he must have been one of the very first to avail himself of this new privilege. He remained only one term. In view of what was to happen by and by, it is interesting to observe that this opportunity for education in law came through the agency of Thomas Jefferson.

<sup>1</sup> His youngest son, Edward Carrington Marshall, graduated at Harvard in 1826.

## BEFORE BECOMING CHIEF JUSTICE 15

The records of the Phi Beta Kappa Society at William and Mary College, where that now famous society had originated less than a year and a half before, show that on the 18th of May, 1780, "Captain John Marshall, being recommended as a gentleman who would make a worthy member of the society, was balloted for and received;" and three days later he was appointed, with others, "to declaim the question whether any form of government is more favorable to public virtue than a Commonwealth." Bushrod Washington and other well-known names are found among his associates in this chapter, which has been well called "an admirable nursery of patriots and statesmen."

It was in the summer of 1780 that Marshall was licensed to practice law.

During this visit to Virginia, as I have said, he met the beautiful little lady, fourteen years old, who became his wife at the age of sixteen, was to be the mother of his ten children,<sup>1</sup> and was to receive from him

<sup>1</sup> Only six of his children grew to full age. See his

the most entire devotion until the day of her death in 1831. Some letters of her older sister, Mrs. Carrington, written to another sister, have lately been printed, which give us a glimpse of Captain Marshall in his twenty-fifth year. These ladies were the daughters of Jaquelin Ambler, formerly collector of customs at Yorktown, and then treasurer of the colony, and living in that town, next door to the family of Colonel Marshall. Their mother was that Rebecca Burwell, for whom, under the name of "Belinda," Jefferson had languished, in his youthful correspondence of some twenty years before. The girls had often heard the captain's letters to his family, and had the highest expectations when they learned that he was coming home from the war. They were to meet him first at a ball, and were contending for the prize beforehand. Mary, the youngest, carried it off. "At the first introduction," writes her sister, who was but touching letter to Judge Story of June 26, 1831: "You ask me if Mrs. Marshall and myself have ever lost a child. We have lost four," etc. — *Proceedings of the Mass. Hist. Soc.* (2d series) xiii. 345.

one year older, "he became devoted to her." "For my own part," she adds, "I felt not the smallest wish to contest the prize with her. . . . She, with a glance, divined his character, . . . while I, expecting an Adonis, lost all desire of becoming agreeable in his eyes when I beheld his awkward, unpolished manner and total negligence of person." "How trivial now seem all such objections!" she exclaims, writing in 1810, and going on to speak with the utmost admiration of his relations to herself and all her family, and above all, to his wife. "His exemplary tenderness to our unfortunate sister is without parallel. With a delicacy of frame and feeling that baffles all description, she became, early after her marriage, a prey to extreme nervous affection, which, more or less, has embittered her comfort through her whole life; but this has only seemed to increase his care and tenderness, and he is, as you know, as entirely devoted as at the moment of their first being married. Always and under every circumstance an enthusiast in love, I have very lately heard

him declare that he looked with astonishment at the present race of lovers, so totally unlike what he had been himself. His never-failing cheerfulness and good humor are a perpetual source of delight to all connected with him, and, I have not a doubt, have been the means of prolonging the life of her he is so tenderly devoted to."

"He was her devoted lover to the very end of her life," another member of his family connection has said. And Judge Story, in speaking of him after his wife's death, described him as "the most extraordinary man I ever saw for the depth and tenderness of his feelings."

A little touch of his manner to his wife is seen in a letter, which is in print, written to her from the city of Washington, on February 23, 1825, in his seventieth year. He had received an injury to his knee, about which Mrs. Marshall was anxious. "I shall be out," he writes, "in a few days. All the ladies of the secretaries have been to see me, some more than once, and have brought me more jelly than I could eat, and

many other things. I thank them, and stick to my barley broth. Still I have lots of time on my hands. How do you think I beguile it? I am almost tempted to leave you to guess, until I write again. You must know that I begin with the ball at York, our splendid assembly at the Palace in Williamsburg, my visit to Richmond for a fortnight, my return to the field, and the very welcome reception you gave me on my arrival at Dover, our little tiffs and makings-up, my feelings when Major Dick<sup>1</sup> was courting you, my trip to the Cottage [the Ambler home in Hanover County, where the marriage took place],<sup>2</sup> — the thousand little incidents, deeply affecting, in turn."

This "ball at York" was the one of which Mrs. Carrington wrote; and of the "assembly at the Palace" she also gave an account, remarking that "Marshall was devoted to my sister."

Miss Martineau, who saw him the year

<sup>1</sup> Richard Anderson, father of Robert Anderson, the hero of Fort Sumter. See Marion Harland's *Old Colonial Homesteads*, 97.

<sup>2</sup> But see Mrs. Hardy, in *The Green Bag*, viii. 482.

before he died, speaks with great emphasis of what she calls his "reverence" and his affectionate respect for women. There were many signs of this all through his life. Even in the grave and too monotonous course of his "Life of Washington," one comes now and then upon a little gleam of this sort, that lights up the page; as when he speaks of Washington's engagement to Mrs. Custis, a lady "who to a large fortune and a fine person added those amiable accomplishments which . . . fill with silent but unceasing felicity the quiet scenes of private life." When he is returning from France, in 1798, he writes gayly back from Bordeaux to the Secretary of Legation at Paris: "Present me to my friends in Paris; and have the goodness to say to Madame Vilette, in my name and in the handsomest manner, everything which respectful friendship can dictate. When you have done that, you will have rendered not quite half justice to my sentiments." "He was a man," said Judge Story, "of deep sensibility and tenderness; . . . whatever may be his fame in the eyes



## BEFORE BECOMING CHIEF JUSTICE 21

of the world, that which, in a just sense, was his brightest glory was the purity, affectionateness, liberality, and devotedness of his domestic life."

Marshall left the army in 1781, when most of the fighting in Virginia was over; and began practice in Fauquier County when the courts were opened, after Cornwallis's surrender, in October of that year.

Among his neighbors he was always a favorite. In the spring of 1782 he was elected to the Assembly, and in the autumn to the important office of member of the, "Privy Council, or Council of State," consisting of eight persons chosen by joint ballot of the two houses of the Assembly. "Young Mr. Marshall," wrote Edmund Pendleton, presiding judge of the Court of Appeals, to Madison, in November of that year, "is elected a councilor. . . . He is clever, but I think too young for that department, which he should rather have earned, as a retirement and reward, by ten or twelve years of hard service." But, whether young or old, the people were for-

ever forcing him into public life. Eight times he was sent to the Assembly ; in 1788 to the Federal Convention of Virginia, and in 1798 to Congress.

Unwelcome as it was to him, almost always, to have his brilliant and congenial place and prospects at the bar thus interfered with, we can see now what an admirable preparation all this was for the great station, which, a little later, to the endless benefit of his country, he was destined to fill. What drove him into office so often was, in a great degree, that delightful and remarkable combination of qualities which made everybody love and trust him, even his political adversaries, so that he could be chosen when no one else of his party was available. In this way, happily for his country, he was led to consider, early and deeply, those difficult problems of government that distressed the country in the dark period after the close of the war, and during the first dozen years of the Federal Constitution. ✓

As regards the effect of his earlier experi-

ence in enlarging the circle of a patriot's thoughts and affections, he himself has said: "I am disposed to ascribe my devotion to the Union, and to a government competent to its preservation, at least as much to casual circumstances as to judgment. I had grown up at a time . . . when the maxim, 'United we stand, divided we fall,' was the maxim of every orthodox American; and I had imbibed these sentiments so thoroughly that they constituted a part of my being. I carried them with me into the army, where I found myself associated with brave men from different States who were risking life and everything valuable in a common cause; . . . and where I was confirmed in the habit of considering America as my country and Congress as my government." It was this confirmed "habit of considering America as my country," communicated by him to his countrymen, which enabled them to carry through the great struggle of forty years ago, and to save for us all, North and South, the inestimable treasure of the Union.

After Marshall's marriage, in January,

1783, he made Richmond his home for the rest of his life. It was still a little town, but it had lately become the capital of the State, and the strongest men at the bar gradually gathered there. Marshall met them all. One has only to look at the law reports of Call and Washington to see the place that he won. He is found in most of the important cases. In his time no man's name occurs oftener, probably none so often.

The earliest case in which the printed reports show his name is that of *Hite v. Fairfax* (4 Call's Reports, 42), in May, 1786, and his argument seems to be fully reported. It was a very important case, and Marshall represented tenants of Lord Fairfax. There were conflicting grants on the famous "Northern Neck" of Virginia, an extensive region given by the crown to Lord Fairfax's ancestor, whose boundaries had been in dispute. It comprised the land between the Potomac and the Rappahannock, "within the heads of the rivers . . . the courses of the said rivers, as they are commonly called or known by the inhabitants and descriptions of those

parts, and Chesapeake Bay, together with the rivers themselves and all the islands within the banks of the rivers." This description was finally admitted by the crown (in 1745) to include all the land between the head springs of the Potomac and those of the south branch of the Rappahannock. Bishop Meade<sup>1</sup> describes it as the region which, beginning on the Chesapeake Bay, lies between the Potomac and Rappahannock rivers, and crossing the Blue Ridge, or passing through it with the Potomac at Harper's Ferry, extends with that river to the heads thereof in the Alleghany Mountains, and thence by a straight line crosses the North Mountain and Blue Ridge at the headwaters of the Rappahannock, . . . the most fertile part of Virginia."

Marshall had now to meet a total denial of Lord Fairfax's title. His argument of ten or twelve pages shows already the characteristics, the cogency, clear method, and neat precision of thought and speech, by which his later work was marked. "I had

<sup>1</sup> *Old Churches and Families of Virginia*, ii. 105.

conceived," he says, "that it was not more certain that there was such a tract of country as the Northern Neck than that Lord Fairfax was the proprietor of it. . . . Gentlemen cannot suppose that a grant made by the crown to the ancestor for services rendered or even for affection can be invalidated in the hands of an heir because these services and affections are forgotten, or because the thing granted has, from causes which must have been foreseen, become more valuable than when it was given. And if it could not be invalidated in the hands of the heir, much less can it be in the hands of the purchaser." As regards the construction of the grant: "Whether Lord Fairfax's grant extended originally beyond the forks of the rivers or not, will no more admit of argument than it ever could have admitted of a doubt. But whether it should be bounded by the north or south fork of the Rappahannock was a question involved in more uncertainty. . . . It is, however, no longer a question, for it has been decided. . . . That decision did not create or extend

Lord Fairfax's right, but determined what the right originally was. The bounds of many patents are doubtful ; the extent of many titles uncertain : but when a decision is once made on them, it removes the doubt and ascertains what the original boundaries were." In reference to a personal appeal in behalf of certain settlers, he says, "Those who explore and settle new countries are generally bold, hardy, and adventurous men, whose minds as well as bodies are fitted to encounter danger and fatigue ; their object is the acquisition of property, and they generally succeed. None will say that the complainants have failed ; and if their hardships and dangers have any weight in the court, the defendants share in them, and have equal claim to countenance ; for they, too, with humbler views and less extensive prospects, have explored, bled for, and settled a till then uncultivated desert."

Compare with this the like simple felicity and exactness of expression in his last reported utterance in court, when he was closing his great career as Chief Justice of the

United States, forty-nine years later. He is refusing a motion for delay: "The court has taken into its serious and anxious consideration the motion made on the part of the government to continue the cause of *Mitchel v. The United States* to the next term. Though the hope of deciding causes to the mutual satisfaction of parties would be chimerical, that of convincing them that the case has been fully and fairly considered, that due attention has been given to the arguments of counsel, and that the best judgment of the court has been exercised on the case, may be sometimes indulged. Even this is not always attainable. In the excitement produced by ardent controversy, gentlemen view the same object through such different media that minds not unfrequently receive therefrom precisely opposite impressions. The court, however, must see with its own eyes, and exercise its own judgment guided by its own reason. . . . The opinion of the court will be delivered."<sup>1</sup>

<sup>1</sup> It was given by another judge.



At first, he had brought from the army, and from his home on the frontier, simple and rustic ways which surprised some persons at Richmond, whose conception of greatness was associated with very different models of dress and behavior. "He was one morning strolling," we are told, "through the streets of Richmond, attired in a plain linen roundabout and shorts, with his hat under his arm, from which he was eating cherries, when he stopped in the porch of the Eagle Hotel, indulged in a little pleasantry with the landlord, and then passed on." A gentleman from the country was present, who had a case coming on before the Court of Appeals, and was referred by the landlord to Marshall as the best lawyer to employ. But "the careless, languid air" of Marshall had so prejudiced the man that he refused to employ him. The clerk, when this client entered the court-room, also recommended Marshall, but the other would have none of him. A venerable-looking lawyer, with powdered wig and in black cloth, soon entered, and the gentleman en-

gaged him. In the first case that came up, this man and Marshall spoke on opposite sides. The gentleman listened, saw his mistake, and secured Marshall at once; frankly telling him the whole story, and adding that while he had come with one hundred dollars to pay his lawyer, he had but five dollars left. Marshall good-naturedly took this, and helped in the case. In the Virginia Federal Convention of 1788, at the age of thirty-three, he is described, rising after Monroe had spoken, as "a tall young man, slovenly dressed in loose summer apparel. . . . His manners, like those of Monroe, were in strange contrast with those of Edmund Randolph or of Grayson."

In such stories as these, one is reminded, as he is often reminded, of a resemblance between Marshall and Lincoln. Very different men they were, but both thorough Americans, with unborrowed character and manners, and a lifelong flavor derived from no other soil.

At the height of Marshall's reputation, in 1797, a French writer, who had visited Rich-

mond lately, in speaking of Edmund Randolph, says, "He has a great practice, and stands, in that respect, nearly on a par with Mr. J. Marshall, the most esteemed and celebrated counselor of this town." He mentions Marshall's annual income as being four or five thousand dollars. "Even by his friends," it is added, "he is taxed with some little propensity to indolence, but he nevertheless displays great superiority when he applies his mind to business." Another contemporary, who praises his force and eloquence in speaking, yet says: "It is difficult to rouse his faculties. He begins with reluctance, hesitation, and vacancy of eye. . . . He reminds one of some great bird, which flounders on the earth for a while before it acquires impetus to sustain its soaring flight." And finally, William Wirt, who was seventeen years Marshall's junior, and came to the bar in 1792, when Marshall was nearly at the head of it, writing anonymously in 1804, describes him as one, "who, without the advantage of person, voice, attitude, gesture, or any of the ornaments of an

orator, deserves to be considered as one of the most eloquent men in the world." He attributes to him "one original and almost supernatural faculty, . . . of developing a subject by a single glance of his mind. . . . His eyes do not fly over a landscape and take in its various objects with more promptitude and facility than his mind embraces and analyzes the most complex subject. . . . All his eloquence consists in the apparently deep self-conviction and the emphatic earnestness and energy of his style, the close and logical connection of his thoughts, and the easy gradations by which he opens his lights on the attentive minds of his hearers."

In 1789 he declined the office of District Attorney of the United States at Richmond,<sup>1</sup> in 1795 that of Attorney-General of the United States, and in 1796 that of Minister to France, all offered him by Washington. When President Adams persuaded him, in 1797, to go, with Pinckney and Gerry, as

<sup>1</sup> Mr. Justice Gray preserves this fact in his address on Marshall. His commission bore the same date with that of Chief Justice Jay, September 26, 1789, — two days after the approval of the Judiciary Act.

envoy to France, he wrote to Gerry of "General Marshall" (as he was then called, from his rank of brigadier general, since 1793, in the Virginia militia), "He is a plain man, very sensible, cautious, guarded, and learned in the law of nations." The extraordinary details of that unsuccessful six months' attempt to come to terms with France are found in Marshall's very able dispatches and in the diary which he kept;<sup>1</sup> for, with the instinct of a man of affairs, he failed not to remember, with Thomas Gray, that "a note is worth a cartload of recollections." His own part in the business was marked by great moderation and ability; and on his return, in 1798, he was received at Philadelphia with remarkable demonstrations and the utmost enthusiasm. A correspondent of Rufus King, writing from New York in July of that year, says, "No two men can be more beloved and honored than Pinckney and Marshall;" and again in November: "Saving General Washington, I believe the President, Pinckney, and Mar-

<sup>1</sup> See Wait's *State Papers*, iii. 165-304.

shall are the most popular characters now in our country. There is a certain something in the correspondence of Pinckney and Marshall . . . that has united all heads and hearts in their eulogy." It is understood that the American side of this correspondence was by Marshall. Gerry had allowed himself in a measure to be detached by the Directory from his associates, to their great displeasure. With them, in important respects, he disagreed.

Among those who paid their respects to Marshall, on his return from France, was Thomas Jefferson, the Vice-President, whose correspondence shows him at the time expressing the most unflattering opinion of the envoys. Jefferson wrote to Marshall the following note: "In after years," says Mrs. Hardy, one of Marshall's descendants,<sup>1</sup> "the Chief Justice frequently laughed over it, saying, 'Mr. Jefferson came very near telling me the truth; the added *un* to *lucky*, policy alone demanded.'" The note ran thus: "Thos. Jefferson presents his compli-

<sup>1</sup> *The Green Bag*, viii. 482.

ments to General Marshall. He had the honor of calling at his lodgings twice this morning, but was so <sup>un</sup>lucky as to find that he was out on both occasions. He wished to have expressed in person his regret that a pre-engagement for to-day, which could not be dispensed with, would prevent him the satisfaction of dining in company with Genl-Marshall, and, therefore, begs leave to place here the expressions of that respect which in company with his fellow-citizens he bears him.

“ Genl. Marshall,

at Oeller’s Hotel, June 23d, 1798.”

In 1798 Adams offered to Marshall the seat on the Supreme Bench, made vacant by the death of James Wilson. He declined it; and it went to his old associate at William and Mary College, Bushrod Washington. Marshall did yield, however, to General Washington’s urgent request to stand for Congress that year. He held out long against Washington’s arguments, and only yielded, at last, when that venerated man called attention to his own recent sacrifice in accepting the unwelcome place of lieu-

tenant-general of the army. When that went into the scale it was too much. Marshall was then on a visit to Mount Vernon, whither he had been invited in August or September, in company with Washington's nephew, the coming judge.

On their way to Mount Vernon, the two travelers met with a misadventure which gave great amusement to Washington, and of which he enjoyed telling his friends. They came on horseback, and carried but one pair of saddlebags, each using one side. Arriving thoroughly drenched by rain, they were shown to a chamber to change their garments. One opened his side of the bags and drew forth a black bottle of whiskey. He insisted that he had opened his companion's repository. Unlocking the other side, they found a big twist of tobacco, some corn bread, and the equipment of a pack-saddle. They had exchanged saddlebags with some traveler, and now had to appear in a ludicrous misfit of borrowed clothes.<sup>1</sup>

<sup>1</sup> Paulding's *Life of Washington*, ii. 191; *Lippincott's Magazine*, ii. 624, 625.



The election of Marshall to Congress excited great interest.<sup>1</sup> Washington heartily rejoiced in it. Jefferson, on the other hand, remarked that while Marshall might trouble the Republicans somewhat, yet he would now be unmasked. He had been popular with the mass of the people, Jefferson said, from his "lax, lounging manners," and with wiser men through a "profound hypocrisy." But now his British principles would stand revealed.

The New England Federalists were very curious about him; they had been alarmed and outraged, during the campaign, by his expressing opposition to the alien and sedition laws; but they were much impressed by him. Theodore Sedgwick wrote to Rufus

<sup>1</sup> In an amusing account of this election (Munford's *The Two Parsons*), we are told that the sheriff presided, with the two candidates, Marshall and John Clopton, seated on the justice's bench. The voter, being asked for whom he voted, gave the name of his candidate; and the latter thanked him; e. g., "Your vote is appreciated, sir," said Marshall to his friend Parson Blair. For an account of the same method of conducting elections in Virginia at a later period, see John S. Wise's *The End of an Era*.

King that he had "great powers, and much dexterity in the application of them. . . . We can do nothing without him." But Sedgwick wished that "his education had been on the other side of the Delaware." George Cabot wrote to King: "General Marshall is a leader. . . . But you see in him the faults of a Virginian. . . . He thinks too much of that State, and he expects that the world will be governed by rules of logic." But Cabot hopes to see him improve, and adds, "He seems calculated to act a great part." In the end, the Northern Federalists were disappointed in finding him too moderate. He held the place of leader of the House, and passed into the cabinet in May, 1800. On January 31, 1801, he was commissioned as Chief Justice.

## CHAPTER II

### ARGUMENTS AND SPEECHES ; LIFE OF WASHINGTON ; RELATIONS WITH JEFFERSON

THERE is little room for quotations from Marshall's speeches or dispatches.

Some reference has already been made to his earliest reported argument in court, in 1786. In the Virginia Federal Convention, in 1788, Marshall's principal speeches related to the subjects of taxation, the militia, and the judiciary. These, so far as preserved, are found in the third volume of Elliot's Debates, and in Dr. Grigsby's very interesting History of that Convention, in the tenth volume of the "Virginia Historical Collections." Nothing remains of a famous speech in support of Jay's treaty, at a public meeting in Richmond in 1795. A summary of his strong but unsuccessful argument in 1796, in the case of *Ware v. Hylton* (3 Dallas 199), as to the claims of British

creditors, his only case before the Supreme Court of the United States, is preserved in the volume of reports. This argument attracted much attention among the statesmen at Philadelphia. "I then became acquainted," he wrote to a friend, "with Mr. Cabot, Mr. Ames, Mr. Dexter, and Mr. Sedgwick of Massachusetts, Mr. Wadsworth of Connecticut, and Mr. King of New York. . . . I was particularly intimate with Mr. Ames."

After Washington's death in 1799, Marshall, in a short and well-known speech, moved the resolution of the House of Representatives.

A little afterwards he made a great and admirably thorough address in a matter which then deeply affected the public mind; from this, his greatest public speech,<sup>1</sup> a quotation is given below. It was made March 4, 1800,

<sup>1</sup> "The masterly and conclusive argument of John Marshall in the House of Representatives. 8 Stat. 129; Wharton's State Trials, 392; Bee [Reports], 286; 5 Wheat. appendix 3." — Gray, J., speaking for the Supreme Court of the United States, in *Fong Yue Ting v. U. S.*, 149 U. S. 698, 714. This speech is also found in Moore's *American Eloquence*, ii. 7.

in defense of the President's action in the case of Thomas Nash, *alias* Jonathan Robbins. This person, a British subject, but claiming to be an American citizen, and to have been impressed into the British navy, was charged with piracy and murder on board a British ship of war in 1791. Being found in Charleston, S. C., he was arrested in 1799, at the instance of the British consul, and held to await an application for his extradition under article 27 of the treaty with Great Britain of 1795. That article bound the two countries reciprocally to deliver up, on request of the other, persons charged with murder committed within the jurisdiction of that other. Evidence of criminality was first to be furnished, such as would justify commitment for trial on the same charge in the country where the accused was found.

An application for extradition was made to the federal authorities in Charleston, but at their suggestion this was transferred to the President, through the Secretary of State. The Secretary informed Bee, the

United States District Judge, of the President's "advice and request" that Nash should be delivered up, at the same time referring to the clause in the treaty as to the necessary evidence of criminality.<sup>1</sup> The judge on July 1, 1799, informed the Secretary that he had notified the British consul that on the production of such evidence, the prisoner would be delivered up when the consul was ready to receive him. The delivery was made; and on September 9 of the same year, the British admiral was able to inform the British Minister that Nash "has been tried at a court martial, and sentenced to suffer death, and afterwards hung in chains; which sentence has been put into execution."

These events were used with great effect by the political opponents of the administration. When Congress met, the President was called upon by the House of Repre-

<sup>1</sup> The President had written to the Secretary of State from Quincy, May 21, 1799: "How far the President of the United States would be justified in directing the judge to deliver up the offender is not clear. I have no objection to advise, and request him to do so." Wharton's *State Trials*, 418.

sentatives for the papers relating to them ; and when they were sent in, Edward Livingston, of New York, submitted resolutions condemning the action of the executive, on the ground that the determination of the questions involved in the case "are all matters exclusively for judicial inquiry ;" that the acts of the President "are a dangerous interference of the executive with judicial decisions ;" and that the compliance of the district judge "is a sacrifice of the constitutional independence of the judicial power." After a full debate, these resolutions were negatived by a decided vote. Marshall's very able argument vindicated the action taken, and laid down principles which have ever since governed the course of the government in such cases.

The following passages will afford a specimen of the style and method of this address, a style and method which were characteristic of all Marshall's work :—

"The same argument applies to the observations on the seventh article of the amendment to the Constitution. That arti-

cle relates only to trials in the courts of the United States, and not to the performance of a contract for the delivery of a murderer not triable in those courts.

“ In this part of the argument, the gentleman from New York [Mr. Livingston] has presented a dilemma, of a very wonderful structure indeed. He says that the offense of Thomas Nash was either a crime or not a crime. If it was a crime, the constitutional mode of punishment ought to have been observed; if it was not a crime, he ought not to have been delivered up to a foreign government, where his punishment was inevitable.

“ It has escaped the observation of that gentleman that if the murder committed by Thomas Nash was a crime, yet it was not a crime provided for by the Constitution or triable in the courts of the United States; and that if it was not a crime, yet it is the precise case in which his surrender was stipulated by treaty. Of this extraordinary dilemma, the gentleman from New York is himself perfectly at liberty to retain either form.



“He has chosen to consider it as a crime, and says it has been made a crime by treaty, and is punished by sending the offender out of the country. The gentleman is incorrect in every part of his statement. Murder on board a British frigate is not a crime created by treaty. It would have been a crime of precisely the same magnitude had the treaty never been formed. It is not punished by sending the offender out of the United States. The experience of the unfortunate criminal, who was hung and gibbeted, evinced to him that the punishment of his crime was of a much more serious nature than mere banishment from the United States.

“The gentleman from Pennsylvania [Mr. Gallatin] and the gentleman from Virginia [Mr. Nicholas] have both contended that this was a case proper for the decision of the courts, because points of law occurred, and points of law must have been decided in its determination. The points of law which must have been decided are stated by the gentleman from Pennsylvania to be, first, a question whether the offense was committed

within the British jurisdiction ; and, secondly, whether the crime charged was comprehended within the treaty.

“ It is true, sir, these points of law must have occurred, and must have been decided, but it by no means follows that they could only have been decided in court. A variety of legal questions must present themselves in the performance of every executive duty, but these questions are not therefore to be decided in court. Whether a patent for land shall issue or not is always a question of law, but not a question which must necessarily be carried into court. The gentleman from Pennsylvania seems to have permitted himself to have been misled by the misrepresentations of the Constitution made in the resolutions of the gentleman from New York ; and, in consequence of being so misled, his observations have the appearance of endeavoring to fit the Constitution to his arguments, instead of adapting his arguments to the Constitution.

“ When the gentleman has proved that these are questions of law, and that they

must have been decided by the President, he has not advanced a single step towards proving that they were improper for executive decision. The question whether vessels captured within three miles of the American coast, or by privateers fitted out in the American ports, were legally captured or not, and whether the American government is bound to restore them, if in its power, were questions of law, but they were questions of political law, proper to be decided, and they were decided by the executive, and not by the courts. The *casus fœderis* of the guaranty was a question of law, but no man could have hazarded the opinion that such a question must be carried into court, and can only be there decided. So the *casus fœderis*, under the twenty-seventh article of the treaty with Britain, is a question of law, but of political law. The question to be decided is, whether the particular case proposed be one in which the nation has bound itself to act, and this is a question depending on principles never submitted to courts. If murder should be committed

within the United States, and the murderer should seek an asylum in Britain, the question whether the *casus fœderis*, of the twenty-seventh article had occurred, so that his delivery ought to be demanded, would be a question of law, but no man would say it was a question which ought to be decided in the courts.

“ When, therefore, the gentleman from Pennsylvania has established that, in delivering up Thomas Nash, points of law were decided by the President, he has established a position which in no degree whatever aids his argument. The case is in its nature a national demand, made upon the nation. The parties are the two nations. They cannot come into court to litigate their claims, nor can a court decide on them. Of consequence, the demand is not a case for judicial cognizance. The President is the sole organ of the nation in its external relations, and its sole representative with foreign nations. Of consequence, the demand of a foreign nation can only be made on him. . . .

“ The treaty, which is a law, enjoins the

performance of a particular object. The person who is to perform this object is marked out by the Constitution, since the person is named who conducts the foreign intercourse and is to take care that the laws be faithfully executed. The means by which it is to be performed, the force of the nation, are in the hands of this person. Ought not this person to perform the object, although the particular mode of using the means has not been prescribed? Congress, unquestionably, may prescribe the mode, and Congress may devolve on others the whole execution of the contract; but, till this is done, it seems the duty of the executive department to execute the contract by any means it possesses.

“The gentleman from Pennsylvania contends that, although this should be properly an executive duty, yet it cannot be performed until Congress shall direct the mode of performance. . . . The treaty stipulating that a murderer shall be delivered up to justice is as obligatory as an act of Congress making the same declaration. If, then,

there was an act of Congress in the words of the treaty, declaring that a person who had committed murder within the jurisdiction of Britain, and sought an asylum within the territory of the United States, should be delivered up by the United States, on the demand of his Britannic Majesty and such evidence of his criminality as would have justified his commitment for trial, had the offense been committed here; could the President, who is bound to execute the laws, have justified the refusal to deliver up the criminal by saying that the legislature had totally omitted to provide for the case?

“The executive is not only the constitutional department, but seems to be the proper department to which the power in question may most wisely and most safely be confided. . . . If, at any time, policy may temper the strict execution of the contract, where may that political discretion be placed so safely as in the department whose duty it is to understand precisely the state of the political intercourse and connection between the United States and foreign nations, to

understand the manner in which the particular stipulation is explained and performed by foreign nations, and to understand completely the state of the Union?"

This clear, strong, convincing speech, of which I have quoted but a small portion, settled the question then in dispute, and the principles here laid down have controlled the action of the government ever since.

Very soon after entering upon his duties as Chief Justice, Marshall undertook to write the "Life of Washington." This gave him a great deal of trouble and mortification. It proved to be an immense labor; the publishers were importunate, and he was driven into print before he was ready. The result was a work in five volumes, appearing from 1802 to 1804, full of the most valuable and authentic material, well repaying perusal, yet put together with singular lack of literary skill, and in many ways a great disappointment.<sup>1</sup> In the later years of his life,

<sup>1</sup> The short "autobiography" before referred to (*ante*, p. 10, n.) ends thus: "I have written no book except

he revised it, corrected some errors, shortened it, and published it in three volumes: one of them, in 1824, as a separate preliminary history of the colonial period, and the other two, in 1834, as the "Life of Washington." This work, in its original form, gave great offense to Jefferson, written, as it was, from the point of view of a constant admirer and supporter of the policy of Washington; a "five volume libel," Jefferson called it.

Jefferson had ludicrous misconceptions as to Marshall's real character. It is said that after Burr's trial, in 1807, all personal intercourse between them ceased.<sup>1</sup> Referring in 1810 to the "batture" case, in which Edward Livingston sued him, and which was to come before Marshall, Jefferson says that he is certain what the result of the case should be, but nobody can tell what it will be; for "the Judge's mind [is] of that gloomy malignity which will never let him forego the opportunity of satiating it upon a

the 'Life of Washington,' which was executed with so much precipitation as to require much correction."

<sup>1</sup> Van Santvoord, *Lives of the Chief Justices*, 343, n.



victim. . . . And to whom is my appeal? From the judge in Burr's case to himself and his associate justices in *Marbury v. Madison*. Not exactly, however. I observe old Cushing is dead. [Judge Cushing had died a fortnight before.] At length, then, we have a chance of getting a Republican majority in the Supreme Judiciary." And he goes on to express his confidence in the "appointment of a decided Republican, with nothing equivocal about him."

Who was this decided and unequivocal Republican to be? Jefferson was anxious about it, and wrote to Madison, suggesting Judge Tyler, of Virginia, as a candidate, and reminding the President of Marshall's "rancorous hostility to his country." Who was it, in fact, that was appointed? Who but Joseph Story! — a Republican, indeed, but one whom Jefferson, in this very year, was designating as a "pseudo-Republican," and who soon became Marshall's warmest admirer and most faithful supporter.

## CHAPTER III

### THE BEGINNINGS OF THE CHIEF JUSTICE'S CAREER ; AMERICAN CONSTITUTIONAL LAW ; MARBURY *v.* MADISON.

MARSHALL'S accession to the bench was marked by an impressive circumstance. For ten years or more, he alone gave all the opinions of the court to which any name was attached, except where the case came up from his own circuit, or, for any reason, he did not sit. In the very few cases where opinions were given by the other justices, it was in the old way, *seriatim*, — the method followed before Marshall came in, as it was also the method of contemporary English courts.

Whatever may have been the purpose of the Chief Justice in introducing this usage, there can be no doubt as to the impression it was calculated to produce. It seemed, all of a sudden, to give to the judicial depart-

ment a unity like that of the executive, to concentrate the whole force of that department in its chief, and to reduce the side-justices to a sort of cabinet advisers. In the very few early cases where there was expressed dissent, it lost much of its impressiveness, when announced, as it sometimes was, by the mouth that gave the opinion of the court.

In 1812, when a change took place, the court had been for a year without a quorum. Moreover, Judge Story had just come to the bench, a man of quite too exuberant an intellect and temperament to work well as a silent side-judge. We remark, also, at the beginning of that term, that the Chief Justice was not in attendance, having, as the reporter tells us, "received an injury by the oversetting of the stage-coach on his journey from Richmond." And it may be added that just at this time the anxious prayer of Jefferson was answered, and a majority of the judges were Republicans. From whatever cause, henceforward there was a change; and without returning to the old

habit of *seriatim* opinions, the side-judges had their turn, as they do now.

In most of Marshall's opinions, one observes the style and special touch of a thoughtful and original mind; in some of them the powers of a great mind, in full activity. His cases relating to international law, as I am assured by those competent to judge, rank with the best there are in the books. As regards most of the more familiar titles of the law, it would be too much to claim for him the very first rank. In that region he is, in many respects, equaled or surpassed by men more deeply versed in the learning and technicalities of the law, in what constitutes that "artificial perfection of reason" which Coke used to glorify as far transcending any man's natural reason, — men such as Story, Kent, or Shaw, or even the reformer, Mansfield, whom he greatly admired, Eldon, or Blackburn. But in the field of constitutional law, a region not open to an English lawyer, — and especially in one department of it, that relating to the nature and scope of the National

Constitution, he was preëminent, — first, with no one second. It is hardly possible, as regards this part of the law, to say too much of the service he rendered to his country. Sitting in the highest judicial place for more than a generation ; familiar, from the beginning, with the Federal Constitution, with the purposes of its framers, and with all the objections of its critics ; accustomed to meet these objections from the time he had served in the Virginia Convention of 1788 ; convinced of the purpose and capacity of this instrument to create a strong nation, competent to make itself respected at home and abroad, and able to speak with the voice and strike with the strength of all ; assured that this was the paramount necessity of the country, and that the great source of danger was in the jealousies and adverse interests of the States, — Marshall acted on his convictions. He determined to give full effect to all the affirmative contributions of power that went to make up a great and efficient national government ; and fully, also, to enforce the national re-

straints and prohibitions upon the States. In both cases he included not only the powers expressed in the Constitution, but those also which should be found, as time unfolded, to be fairly and clearly implied in the objects for which the federal government was established. In that long judicial life, with which Providence blessed him, and blessed his country, he was able to lay down, in a succession of cases, the fundamental considerations which fix and govern the relative functions of the nation and the States, so plainly, with such fullness, with such simplicity and strength of argument, such a candid allowance for all that was to be said upon the other side, in a tone so removed from controversial bitterness, so natural and fit for a great man addressing the "serene reason" of mankind, as to commend these things to the minds of his countrymen, and firmly to fix them in the jurisprudence of the nation ; so that "when the rain descended and the floods came, and the winds blew and beat upon that house, it fell not, because it was founded upon a rock." It was Marshall's

strong constitutional doctrine, explained in detail, elaborated, powerfully argued, over and over again, with unsurpassable earnestness and force, placed permanently in our judicial records, holding its own during the long emergence of a feebler political theory, and showing itself in all its majesty when war and civil dissension came, — it was largely this that saved the country from succumbing, in the great struggle of forty years ago, and kept our political fabric from going to pieces.

I do not forget our own Webster, or others, in saying that to Marshall (if we may use his own phrase about Washington), "more than to any other individual, and as much as to one individual was possible," do we owe that prevalence of sound constitutional opinion and doctrine at the North that held the Union together; to that combination in him, of a great statesman's sagacity, a great lawyer's lucid exposition and persuasive reasoning, a great man's candor and breadth of view, and that judicial authority on the bench, allowed naturally

and as of right, to a large, sweet nature, which all men loved and trusted, capable of harmonizing differences and securing the largest possible amount of coöperation among discordant associates. In a very great degree, it was Marshall, and these things in him, that have wrought out for us a strong and great nation, one which men can love and die for ; that "mother of a mighty race," that stirred the soul of Bryant half a century ago, as he dreamed how —

"The thronging years in glory rise,  
And as they fleet,  
Drop strength and riches at thy feet ; "

the nation whose image flamed in the heart of Lowell, a generation since, as he greeted her coming up out of the Valley of the Shadow of Death : —

" Oh Beautiful, my country, ours once more ! . . .  
Among the nations bright beyond compare ! . . .  
What were our lives without thee ?  
What all our lives to save thee ?  
We reck not what we gave thee,  
We will not dare to doubt thee,  
But ask whatever else, and we will dare ! "



It was early in Marshall's day that the Supreme Court first took the grave step of disregarding an act of Congress, — a coördinate department, — which conflicted with the National Constitution. The right to deal thus with their legislatures had already been asserted in the States, and once or twice it had really been exercised. Had the question related to a conflict between that Constitution and the enactment of a State, it would have been a simpler matter. These two questions, under European written constitutions, are regarded as different ones. It is almost necessary to the working of a federal system that the general government, and each of its departments, should be free to disregard acts of any department of the local states which may be inconsistent with the federal constitution. And so in Switzerland and Germany the federal courts thus treat local enactments. But there is not under any written constitution in Europe a country where a court deals in this way with the act of its coördinate legislature. In Germany, at one time, this was done, under the

influence of a study of our law, but it was soon abandoned.<sup>1</sup>

In the colonial period, while we were dependencies of Great Britain, our legislation was subject to the terms of the royal charters. Enactments were often disallowed by the English Privy Council, sometimes acting as mere revisers of the colonial legislation, and sometimes as appellate judicial tribunals. Our people were, in this way, familiar with the theory of a dependent legislature, one whose action was subject to reversal by judicial authority, as contrary to the terms of a written charter of government.

When, therefore, after the war of independence, our new sovereign, namely, ourselves, the people, came to substitute for the old royal charters the people's charters, what we call our "constitutions," — it was natural to expect some legal restraint upon legislation. It was not always found in terms; indeed, it was at first hardly ever, if at all, found set down in words. But it was a

<sup>1</sup> Coxe, *Jud. Power*, 95-102; Thayer's *Cases on Constitutional Law*, i. 146-149.

natural and just interpretation of these instruments, made in regions with such a history as ours and growing out of the midst of such ideas and such an experience, to think that courts, in the regular exercise of their functions, that is to say, in dealing with litigated cases, could treat the constitutions as law to be applied by them in determining the validity of legislation.

But this, although, as we may well think, a sound conclusion, was not a necessary one ; and it was long denied by able statesmen, judges, and lawyers. An elaborate and powerful dissenting opinion by Chief Justice Gibson, of Pennsylvania, containing the most searching argument on the subject with which I am acquainted, given in 1825,<sup>1</sup> reaches the result that under no constitution where the power to set aside legislative enactments is not expressly given, does it exist. But it is recognized that in the Federal Constitution the power is given, as regards legislation of the States inconsistent with the Federal Constitution and laws.

<sup>1</sup> *Eakin v. Raub*, 12 Sergeant & Rawle, 390.

It is not always noticed that in making our Federal Constitution, there was an avoidance of any explicit declaration of such a power as touching federal legislation, while it was carefully provided for as regards the States. In the Federal Convention, there was great anxiety to control the States, in certain particulars; and various plans were put forward, such as that Congress should have a negative on state laws, and that governors of the States should be appointed by the federal authority, with power to negative state acts.

But all these, at last, were rejected, and the matter took the shape of a provision that the Constitution and the constitutional laws and treaties of the United States should be the supreme law of *the respective States*; and the judges of *the several States* should be bound thereby, anything in the constitution or laws of any State to the contrary notwithstanding. Later, the Committee on Style changed the phrase "law of the respective States" to "law of the land." But the language, as to binding the judges, was

still limited to the judges of the several States. Observe, then, the scope of this provision: it was to secure the authority of the federal system within the States.

As to any method of protecting the federal system within its own household, that is to say, as against Congress, it was proposed in the convention, for one thing, that each House of Congress might call upon the judges for opinions; and, again, it was urged, and that repeatedly and with great persistence, that the judges should be joined with the executive in passing on the approval or disapproval of legislative acts, — in what we call the veto power. It was explicitly said, in objecting to this, that the judges would have the right to disregard unconstitutional laws anyway, — an opinion put forward by some of the weightiest members. Yet some denied it. And we observe that the power was not expressly given. When we find such a power expressly denied, and yet not expressly given; and when we observe, for example, that leading public men, *e. g.*, so conspicuous a member of the con-

vention as Charles Pinckney of South Carolina, afterwards a senator from that State, wholly denied the power ten years later;<sup>1</sup> it being also true that he and others of his way of thinking urged the express restraints on state legislation, — we may justly reach the conclusion that this question, while not overlooked, was intentionally left untouched. Like the question of the bank and various others, presumably it was so left in order not to stir up enemies to the new instrument; left to be settled by the silent determinations of time, or by later discussion.

Turning now to the actual practice under the government of the United States, we find that the judges of the Supreme Court had hardly taken their seats, at the beginning of

<sup>1</sup> What Pinckney said in 1799 was this: "Upon no subject am I more convinced than that it is an unsafe and dangerous doctrine in a republic ever to suppose that a judge ought to possess the right of questioning or deciding upon the constitutionality of treaties, laws, or any act of the legislature. It is placing the opinion of an individual, or of two or three, above that of both branches of Congress, a doctrine which is not warranted by the Constitution, and will not, I hope, long have many advocates in this country." Wharton, *State Trials*, 412.

the government, when Chief Justice Jay and several other judges, in 1790, communicated to the President objections to the Judiciary Act, as violating the Constitution, in naming the judges of the Supreme Court to be judges also of the circuit courts.<sup>1</sup> These judges, however, did not refuse to act under this unconstitutional statute; and the question did not come judicially before the court until Marshall's time, in 1803,<sup>2</sup> when it was held that the question must now be regarded as settled in favor of the statute, by reason of acquiescence since the beginning of the government.<sup>3</sup>

<sup>1</sup> 4 Amer. Jurist, 293; Story, Const. § 1579, n.

<sup>2</sup> *Stuart v. Laird*, 1 Cranch, 290.

<sup>3</sup> Marshall, when the act of 1802 restored the old system, stated to his associates his deliberate agreement with the opinion expressed by his predecessors above referred to, and proposed to refuse to sit in the circuit court. All his brethren agreed with his view on the constitutional point, but thought the question should be regarded as at rest, by reason of the earlier practice of the court, up to 1801. This view prevailed, and was soon afterwards, as above stated, judicially adopted by the court. This statement is made by Chancellor Kent in 3 N. Y. Review, 347 (1838).

For the knowledge of the authorship of this valuable article and of another related one in 2 *ib.* 372, I am in-

In observing, historically, the earlier conceptions of the judges of the Supreme Court as to the method of dealing with unconstitutional legislation, one or two other transactions should be looked at. In 1792 (1 U. S. Statutes, 243) a statute was enacted which required the circuit court, partly composed, as we have seen, of the judges of the Supreme Court, to pass on the claims of certain soldiers and others demanding pensions, and to report to the Secretary of War; who was, in turn, to revise these returns and report to Congress. The judges found great difficulty in acting under this statute, because it imposed on them duties not judicial in their nature; and they expressed their views in various ways.

In one circuit, the judges thinking it improper to act under this statute in their judicial capacity, for the reason above-named, consented from charitable motives to serve as "commissioners."<sup>1</sup>

debted to the courtesy of Dr. J. S. Billings, the Director of the New York Public Library, and the investigations of Mr. V. H. Paltsits, one of the librarians in that institution.

<sup>1</sup> This construction, that the statute purported to au-



In the Pennsylvania circuit, the three judges wrote, in a letter to the President, that "on a late painful occasion" they had held the law invalid; and they now stated the matter to him, as being the person charged with the duty of "taking care that the laws be faithfully executed." They assured him that while this judicial action of disregarding an act of Congress had been necessary, it was far from pleasant.

The judges of another circuit, before which no case had come, wrote a similar letter to the President, declaring their reasons for thinking the law invalid.

In this same year, 1792, the Pennsylvania case came regularly up to the Supreme Court, and was argued there.<sup>1</sup> This might have produced a decision, but none was ever given; and in the next year a change in the statute provided relief for the pension claimants in another way.

It is to be remarked, then, that this authorize their acting in that capacity was afterwards, in 1794, held by the Supreme Court to be wrong. *Yale Todd's Case*, 13 Howard, 52.

<sup>1</sup> *Hayburn's Case*, 2 Dallas, 409.

ter resulted in no decision by the Supreme Court of the United States on the question of the constitutionality of the pension act ; it produced only a decision at one of the circuits, and informal expressions of opinion from most of the judges.

These non-judicial communications of opinion to the President seem, as has been said, to have proceeded on the theory of furnishing information to one whose official duty it was to see that the fundamental law was faithfully carried out ; just as "Councils of Revision," established by the constitutions of Pennsylvania and Vermont, were to report periodically as to infractions of the constitution.

It was, perhaps, these practices of private communication between the President and the judges that led very soon to another interesting matter, — a formal request by the President, in 1793, for an opinion from the judges on twenty-nine questions relating to the treaties with France. This request accorded with a colonial practice of asking such opinions from judges ; a usage centu-

ries old in England, and preserved to-day in the constitutions of a few States in this country. The judges, however, declined answering these questions, "considering themselves," says Marshall, in his "Life of Washington," "merely as constituting a legal tribunal for the decision of controversies brought before them in legal form."<sup>1</sup> Although this seems to have been obviously the right course, since the proposition to give power to put questions to the judges in this way had been considered in the Federal Convention and not allowed, yet we may remark how convenient such a power would often have proved. If it be admitted, as it always has been in England, and is, almost universally, here, that such opinions are merely learned advice and bind nobody, not even the judges, they would often afford the executive and Congress much needed and early help upon constitutional questions in serious emergencies; such, for example, as have lately presented themselves in our own history.

<sup>1</sup> Volume v., p. 444 (Philadelphia edition, 1807).

After this, there was an occasional allusion in the opinions of the Supreme Court to the question of the power of that court to pass on the constitutionality of Federal enactments as being an undecided and more or less doubtful question. But not until 1803, early in Marshall's time, was the point judicially presented to the Supreme Court. It came up in the case of *Marbury v. Madison*,<sup>1</sup> the first case at the third term after any opinions of Marshall were reported. In that case, an act of Congress was declared unconstitutional.

It was more than half a century before that happened again.

*Marbury v. Madison* was a remarkable case. It was connected intimately with certain executive action for which Marshall as Secretary of State was partly responsible. For various reasons the case must have excited peculiar interest in his mind. Within three weeks before the end of Adams's administration, on February 13, 1801, while Marshall was both Chief Justice and Secre-

<sup>1</sup> 1 Cranch, 137.

tary of State,<sup>1</sup> an act of Congress had abolished the old system of circuit and district courts, and established a new one. This gave to the President, Adams, the appointment of many new judges, and kept him and his secretary busy, during the last hours of the administration, in choosing and commissioning the new officials.

And another thing. The Supreme Court had consisted heretofore of six judges. This same act provided that after the next vacancy there should be five judges only. Such arrangements as these, made by a party just going out of power, were not ill calculated to create, in the mind of the party coming in, the impression of an intention to keep control of the judiciary as long as possible.

There were, to be sure, other reasons for some of this action. Several judges of the Supreme Court, as we have seen, had signified to Washington, in 1790, the opinion

<sup>1</sup> In like manner, Jay, commissioned Chief Justice on September 26, 1789, continued, at Washington's request, to act also as foreign secretary until Jefferson's return from Europe. Jefferson did not reach New York until March 21, 1790.

that the judiciary act of the previous year was unconstitutional in making the judges of that court judges also of the circuit court. The new statute corrected this fault. Yet, in regard to the time chosen for this very proper action, it was observable that ten years and more had been allowed to pass before the mischief so promptly pointed out by the early judges was corrected.

Again, in approaching the case of *Marbury v. Madison*, it is to be observed that another matter relating to the Supreme Court had been dealt with. This act of February 13, 1801, provided that the two terms of the court, instead of being held, as hitherto, in February and August, should thereafter be held in June and December. Accordingly, the court sat in December, 1801. It adjourned, as it imagined, to June, 1802. But, on March 8 of that year, Congress, under the new administration, repealed the law of 1801, unseated all the new judges, and reinstated the old system, with its August and February terms. And then, a little later in the year, the August

term of the court was abolished, leaving only one term a year, to begin on the first Monday in February. Thus, since the June term was abolished, and February had then passed, and there was no longer an August or a December term, the court found itself in effect adjourned by Congress from December, 1801, to February, 1803; and so it had no session during the whole of the year 1802.

If the legislation of 1801 was calculated to show the importance attached by an outgoing political party to control over the judiciary, that of 1802 might indicate how entirely the incoming party agreed with them, and how well inclined they were to profit by their own opportunities.

How was it, meantime, with the judiciary itself? Unfortunately, the Supreme Court had already been drawn into the quarrel. For, at the single December term, in 1801, held under the statute of that year, an application had been made to the court by four persons in the District of Columbia for a rule upon James Madison, Secretary of

State, to show cause why a writ of mandamus should not issue requiring him to issue to these persons certain commissions as justice of the peace, which had been left in Marshall's office undelivered at the time when he ceased to add to his present functions those of Secretary of State. They had been made out, sealed, and signed, and were supposed to have been found by Madison when he came into office, and to be now withheld by him. This motion was pending when the court adjourned, in December, 1801. Of course, a motion for a mandamus to the head of the cabinet, upon a matter of burning interest, must have attracted no little attention on the part of the new administration. Abolishing the August term served to postpone any opportunity for early action by the court, and to remind the judiciary of the limits of its power.

At last the court came together, in February, 1803, and found the mandamus case awaiting its action. It is the first one reported at that term. Since Marshall had taken his seat, there had as yet been only



five reported cases. All the opinions had been given by him, unless a few lines "by the court" may be an exception; and according to the new usage by which the Chief Justice became, wherever it was possible, the sole organ of the court, Marshall now gave the opinion in *Marbury v. Madison*. It may reasonably be wondered that the Chief Justice should have been willing to give the opinion in such a case, and especially that he should have handled the case as he did. But he was sometimes curiously regardless of conventions.

If it be asked what was decided in *Marbury v. Madison*, the answer is that this, and only this, was decided, namely, that the court had no jurisdiction to do what they were asked to do in that case (*i. e.* to grant a writ of mandamus, in the exercise of their original jurisdiction), because the Constitution allowed to the court no such power; and, although an act of Congress had undertaken to confer this jurisdiction on them, Congress had no power to do it, and therefore the act was void, and must be disregarded by the

court.<sup>1</sup> It is the decision upon this point that makes the case famous; and undoubtedly it was reached in the legitimate exercise of the court's power. To this important part of the case attention will be called in the next chapter.

Unfortunately, instead of proceeding as courts usually do, the opinion began by passing upon all the points which the denial of its own jurisdiction took from it the right to treat. It was elaborately laid down, in about twenty pages, out of the total twenty-seven which comprise the opinion, that Madison had no right to detain the commissions; and that mandamus would be the proper remedy in any court which had jurisdiction to grant it.

And thus, as the court, by its decision in this case, was sharply reminding the legislature of its limitations, so by its *dicta*, and in this irregular method, it intimated to the President, also, that his department was not exempt from judicial control. In this way

<sup>1</sup> And so the careful headnote of Judge Curtis in 1 Curtis's *Decisions of the Supreme Court*, 368.

two birds were neatly reached with the same stone.

Marshall made a very noticeable remark in his opinion, seeming to point to the chief executive himself, and not merely to his secretary, when he said, "It is not the office of the person to whom the writ is directed, but the nature of the thing to be done, by which the propriety or impropriety of issuing the mandamus is to be determined ;" — a hint that, on an appropriate occasion, the judiciary might issue orders personally to him. This remark got illustration a few years later, in 1807, when the Chief Justice, at the trial of Aaron Burr in Richmond, ordered a subpoena to the same President, Thomas Jefferson, directing him to bring thither certain documents. It was a strange conception of the relations of the different departments of the government to each other, to imagine that a subpoena, that is to say an order accompanied with a threat of punishment, was a legitimate judicial mode of communicating with the chief executive. On Jefferson's part, this order

was received with the utmost discontent; and justly. He had a serious apprehension of a purpose to arrest him by force, and was prepared to protect himself.<sup>1</sup> Meantime he sent to the United States Attorney at Richmond the papers called for, but explained, with dignity, that while the executive was willing to testify in Washington, it could not allow itself to be "withdrawn from its station by any coördinate authority."

It was partly to the tendency on Marshall's part, just mentioned, to give little thought, often, to ordinary conventions, and partly to his kindness of heart, that we should attribute another singular occurrence, — the fact that he attended a dinner at the house of an old friend, one of Burr's counsel, when he knew that Burr was to be present, and when that individual, having previously been brought to Richmond under arrest, examined by Marshall, and admitted to bail, was still awaiting the action of the grand jury with reference to further judicial

<sup>1</sup> See Ford's *Jefferson*, ix. 62; draft of a letter to District Attorney Hay.

proceedings before Marshall himself. He accepted the invitation before he knew that Burr was to be of the company. I have heard from one of his descendants that his wife advised him not to go; but he thought it best not to seem too fastidious, or to appear to censure his old friend, the host, by staying away. He sat, we are told, at the opposite end of the table from Burr, had no communication with him, and went away early. But we must still wonder at an act which he himself afterwards much regretted.

## CHAPTER IV

### MARSHALL'S CONSTITUTIONAL OPINIONS

THIS is not the place for any detailed consideration of Marshall's decisions. But it would be a strange omission to leave out all consideration of what played so great a part in his life. I must draw, therefore, upon the patience of the reader, while some points are mentioned relating to that class of his opinions which is at once the most important and of the widest interest, viz., those given in constitutional cases. If these matters seem to any reader dull or unintelligible, he must be allowed full liberty to pass them by; but I cannot wholly omit them.

The keynote to Marshall's leading constitutional opinions is that of giving free scope to the power of the national government. These leading opinions may be divided into three classes: *First*, such as discuss the nature and reach of the Federal

Constitution, and the general relation of the federal government to the States. Of this class, *McCulloch v. Maryland*, probably his greatest opinion, is the chief illustration. *Second*, those cases which are concerned with the specific restraints and limitations upon the States. To this class may be assigned *Fletcher v. Peck*, the bankruptcy cases of *Sturgis v. Crowninshield* and *Ogden v. Saunders*, and *Dartmouth College v. Woodward*. *Third*, such as deal with the general theory and principles of constitutional law. There is little of this sort; except as it is incidentally touched, perhaps the only case is *Marbury v. Madison*.

If we look at these great cases merely with reference to their effect upon the history and development of the country, they are of the very first importance. When one names *Marbury v. Madison*, the first case where the Supreme Court held an act of Congress invalid, and the only one in Marshall's time; *Fletcher v. Peck* and *Dartmouth College v. Woodward*, where legislative grants and an act of incorporation are

held to be contracts, protected by the United States Constitution against state legislation impairing their obligation ; and *New Jersey v. Wilson*, holding that a legislative exemption from taxation is also a contract protected in the same way ; — one sees the tremendous importance of the decisions.

Of course we are not to confound this powerful effect of a judgment, or the moral approbation with which we may be inclined to view it, with the intrinsic merit of the reasoning or the legal soundness of the conclusions. It is not uncommon to speak of the reasoning in *Marbury v. Madison* and *Dartmouth College v. Woodward* with the greatest praise. But neither of these opinions is entitled to rank with Marshall's greatest work. The very common view to which I have alluded is partly referable to the fallacy which Wordsworth once remarked upon when a friend mentioned "*The Happy Warrior*" as being the greatest of his poems. "No," said the poet, "you are mistaken ; your judgment is affected by your moral approval of the lines."



If we regard at once the greatness of the questions at issue in the particular case, the influence of the opinion, and the large method and clear and skillful manner in which it is worked out, there is nothing so fine as the opinion in *McCulloch v. Maryland*, given at the February term, 1819. The questions were, first, whether the United States could constitutionally incorporate a bank ; and, second, if it could, whether a State might tax the operations of the bank ; as, in this instance, by requiring it to use stamped paper for its notes. The bank was sustained and the tax condemned.

In working this out, it was laid down that while the United States is merely a government of enumerated powers, and these do not in terms include the granting of an incorporation, yet it is a government whose powers, though limited in number, are in general supreme, and also adequate to the great national purposes for which they are given ; that these great purposes carry with them the power of adopting such means, not prohibited by the Constitution, as are fairly

conducive to the end ; and that incorporating a bank is not forbidden, and is useful for several ends. Further, the paramount relation of the national government, whose valid laws the Constitution makes the supreme law of the land, forbids the States to tax, or to "retard, impede, burden, or in any way control" the operations of the government in any of its instrumentalities.

This was the opinion of a unanimous court, in which five out of the seven judges had been nominated by a Republican President. But it caused great excitement at the South. On March 24, 1819, Marshall wrote from Richmond to Judge Story : "Our opinion in the bank case has roused the sleeping spirit of Virginia, if indeed it ever sleeps. It will, I understand, be attacked in the papers with some asperity, and as those who favor it never write for the public it will remain undefended, and of course be considered as *damnably heretical*." Again, two months later, "The opinion in the bank case continues to be denounced by the Democracy of Virginia. . . . If the prin-

ciples which have been advanced on this occasion were to prevail the Constitution would be converted into the old Confederation."

Another great opinion, of the same class, and also bitterly attacked, was given in the case of *Cohens v. Virginia*, in 1821. This case came up on a writ of error from a local court at Norfolk. Cohens had been convicted of selling lottery tickets there, contrary to the statute of Virginia. He had set up as a defense an act of Congress providing for drawing lotteries in the city of Washington, and insisted that this authorized his selling tickets in Virginia. When the case reached the Supreme Court of the United States, the counsel for the State first denied the jurisdiction of that court, on the ground, among others, that the Constitution allowed no such appeal from a state court, and that the Judiciary Act of 1789 was unconstitutional in purporting to authorize it. In an elaborate opinion by Marshall, one of his greatest efforts, these contentions were negatived. When afterwards, the case came

to be argued on the merits, the decision below was sustained, on the ground that the act of Congress did not purport to authorize the sale of tickets in any State which forbade the sale of them.

Here again the court was unanimous; and it was composed of the same judges who decided *McCulloch v. Maryland*. But the reception of *Cohens v. Virginia* at the South was even worse than that accorded the other case. Judge Roane, of the Court of Appeals in Virginia, attacked the opinion anonymously in the newspapers, with what Marshall called "coarseness and malignity." Jefferson, also, bitterly objected to it.

Of two other cases belonging in the same class of Marshall's opinions, viz., *Gibbons v. Ogden*, in 1824, and *Brown v. Maryland*, in 1827, it is enough here to say that they deal with one of the most difficult and perplexed topics of constitutional law, namely, the coördination of the functions of the national and state governments, in regard to the power granted to Congress to regulate foreign and interstate commerce, a subject of

great importance and difficulty, on which the decisions of the Supreme Court are now and long have been involved in much confusion and uncertainty. *Gibbons v. Ogden* brought into question the constitutionality of a law of New York granting to Fulton, the inventor, the sole right of navigating the waters of New York by steam. The grant had been sustained by Chancellor Kent and by the New York Court of Appeals; but these decisions were now overruled in a famous and powerful opinion. In two other cases on this subject, also of great importance, Marshall gave leading opinions. It may fairly be thought that his treatment of the general question involved in these cases, instructive as it was, was yet less fruitful and less far-seeing than in most of his other great cases.

He was now in a region pretty closely connected with the second class of cases, above named; a set of cases, where even so great a man as Marshall erred sometimes, from interpreting too literally and too narrowly the restraints upon the States. It was

natural, in giving full scope to the authority of the general government, that he should be inclined to apply, with their fullest force and operation, these clauses of restraint and prohibition. His great service to the country and his own generation was that of planting the national government on the broadest and strongest foundations. That, as he rightly conceived, was the one chief necessity of his time. In doing this, when it came to considering the reach that must also be allowed to the States, and just how the coördination of the two systems should be worked out, probably no one man, no one court, no human wisdom was adequate, then, to mapping it all out. Time alone, and a long succession of men, after some ages of experience, might suffice for that. The wisdom of those who made the Constitution, as it has lately been said, was mainly shown "in the shortness and generality of its provisions, in its silence, and its abstinence from petty limitations." But, as time went on, definitions and specifications had to be made and applied; silence, abstinence,

generality, were no longer adequate. And in the class of cases, now referred to, great and far-reaching as were the results of Marshall's labor, and unqualifiedly as they are often praised, one may perceive, as I venture to think, a less comprehensive and statesmanlike grasp of the problems and their essential conditions than are found in some other parts of his work.

And so, when the Chief Justice, in 1812, held, without argument, that a grant of land by a State, with a privilege of exemption from taxation, contained a contract against future taxation, protected, even in the hands of subsequent holders, by the constitutional provisions against impairing the obligation of contracts, something was done which would probably not be done to-day, if the question came up for the first time. Certainly the soundness of the doctrine has been frequently denied by judges of the Supreme court, and it has only survived through the device of construing all grants in the narrowest manner. "Yielding," says the Court in a recent case, "to the doctrine that im-

munity from taxation may be granted, that point being already adjudged, it must be considered as a personal privilege, not extending beyond the immediate grantee, unless otherwise so declared in express terms." And again the court has recently remarked on the "well-settled rule that exemptions from taxation are . . . not to be extended beyond the exact and express language used, construed *strictissimi juris*."

Again, in *Dartmouth College v. Woodward*, in 1819, when it was held that a legislative grant of incorporation was a contract protected by the same clause of the Constitution, something was done from which the court was subsequently obliged to recede in an important degree. Acts of incorporation for the manufacture of beer, for carrying on slaughter-houses, for dealing in offal, and for conducting a lottery, — a reputable business in 1819, when the *Dartmouth College* case was decided, — such acts as these have been treated by the Supreme Court as not being thus protected. It is held that no legislative body can contract to part with



the full power to provide for the health, morals, and safety of the community. Such things, it is said, are not the proper subject-matter of legislative contract, — a doctrine which it has been widely thought should, originally, have been applied to all acts of incorporation. "The State," says a distinguished judge, and writer on constitutional law, in speaking of the Dartmouth College doctrine and its development, "was stripped, under this interpretation, of prerogatives that are commonly regarded as inseparable from sovereignty, and might have stood, like Lear, destitute before her offspring, had not the police power been dexterously declared paramount, and used as a means of rescinding improvident grants." <sup>1</sup>

In the great bankruptcy cases of *Sturgis v. Crowninshield* and *Ogden v. Saunders*, where it was held, in 1819 and 1827, that the constitutional provision as to impairing the obligation of contracts forbade the State to enact an insolvency law which should discharge a person from liability on a

<sup>1</sup> Hare, *Am. Const. Law*, i. 607.

contract made before the law; and then again that it did not forbid the same thing as touching a contract made after the law, Marshall, who gave the opinion in the first case, put it on a ground equally applicable to the second; and so, in the second case, gave a dissenting opinion. The obligation of the contract, he said, comes from the agreement of the party; it does not arise from the law of the State at the time it was made, entering into or operating on the contract. But this doctrine and this reasoning were justly disallowed.

Finally, in 1830, in *Craig v. Missouri*, Marshall gave the opinion that certain certificates issued by a State in return for deposits, and intended to circulate as money, were bills of credit; and as such forbidden by the Constitution. There were three dissenting opinions; and soon after Marshall's death, a different doctrine was established by the court, — wisely it would seem, — and has ever since been maintained.<sup>1</sup>

Coming now to the third class of cases

<sup>1</sup> See, however, Chancellor Kent in 2 N. Y. Rev. 372.

mentioned above, that which deals with the fundamental conceptions and theory of our American doctrine of constitutional law, *Marbury v. Madison* is the chief case. In speaking of that case I have purposely delayed until this point any reference to this aspect of it. While, historically, this part of it is what gives the case its chief importance, yet it occupies only about a quarter of the opinion.

In outline, the argument there presented is as follows: The question is whether a court can give effect to an unconstitutional act of the legislature. This question is answered, as having little difficulty, by referring to a few "principles long and well established." (1) The people, in establishing a written constitution and limiting the powers of the legislature, intend to control it; else the legislature could change the constitution by an ordinary act. (2) If a superior law is not thus changeable, then an unconstitutional act is not law. This theory, it is added, is essentially attached to a written constitution. (3) If the act is void, it

cannot bind the court. The court has to say what the law is, and in saying this must judge between the Constitution and the act. Otherwise, a void act would be obligatory; and this would be saying that constitutional limits upon legislation may be transgressed by the legislature at pleasure, and thus these limits would be reduced to nothing. (4) The language of the Federal instrument gives judicial power in "cases arising under the Constitution." Judges are thus in terms referred to the Constitution. They are sworn to support it and cannot violate it. And so, it is said, in conclusion, the peculiar phraseology of the instrument confirms what is supposed to be essential to all written constitutions, that a law repugnant to it is void, and that the courts, as well as other departments, are bound by the constitution.

The reasoning is mainly that of Hamilton, in his short essay of a few years before in the "Federalist." The short and dry treatment of the subject, as being one of no real difficulty, is in sharp contrast with the protracted reasoning of *McCulloch v.*

Maryland, *Cohens v. Virginia*, and other great cases; and this treatment is much to be regretted. Absolutely settled as the general doctrine is to-day, and sound as it is, when regarded as a doctrine for the descendants of British colonists, there are grave and far-reaching considerations — such, too, as affect to-day the proper administration of this extremely important power — which are not touched by Marshall, and which must have commanded his attention if the subject had been deeply considered and fully expounded according to his later method. His reasoning does not answer the difficulties that troubled Swift, afterwards chief justice of Connecticut, and Gibson, afterwards chief justice of Pennsylvania, and many other strong, learned, and thoughtful men; not to mention Jefferson's familiar and often ill-digested objections.

It assumes as an essential feature of a written constitution what does not exist in any one of the written constitutions of Europe. It does not remark the grave dis-

inction between the power of disregarding the act of a coördinate department, and the action of a federal court in dealing thus with the legislation of the local States ; a distinction important in itself, and observed under the written constitutions of Europe, which, as I have said, allow this power in the last sort of case, while denying it in the other.

Had Marshall dealt with this subject after the fashion of his greatest opinions he must also have considered and passed upon certain serious suggestions arising out of the arrangements of our own constitutions and the exigencies of the different departments. All the departments, and not merely the judges, are sworn to support the Constitution. All are bound to decide for themselves, in the first instance, what this instrument requires of them. None can have help from the courts unless, in course of time, some litigated case should arise ; and of some questions it is true that they never can arise in the way of litigation. What was Andrew Johnson to do when the Recon-

struction Acts of 1867 had been passed over his veto by the constitutional majority, while his veto had gone on the express ground, still held by him, that they were unconstitutional? He had sworn to support the Constitution. Should he execute an enactment which was contrary to the Constitution, and so void? Or should he say, as he did say to the court, through his Attorney-General, that "from the moment [these laws] were passed over his veto, there was but one duty, in his estimation, resting upon him, and that was faithfully to carry out and execute these laws"?<sup>1</sup> And why is he to say this?

Again, what is the House of Representatives to do when a treaty, duly made and ratified by the constitutional authority, namely, the President and Senate, comes before it for an appropriation of money to carry it out? Has the House, under these circumstances, anything to do with the question of constitutionality? If it thinks the treaty unconstitutional, and so void, can it

<sup>1</sup> *Mississippi v. Johnson*, 4 Wallace, 475, 492 (1866).

vote to carry it out? If it can, how is this justified?

Is the situation necessarily different when a court is asked to enforce a legislative act? The courts are not strangers to the case of political questions, where they must refuse to interfere with the acts of the other departments, — as in the case relating to Andrew Johnson just referred to; and in dealing with what are construed to be merely directory provisions of the Constitution; and with the cases, well approved in the Supreme Court of the United States, where courts refuse to consider whether provisions of a constitution have been complied with, which require certain formalities in passing laws, — accepting as final the certificate of the officers of the political departments. A question, passed upon by those departments, is thus refused any discussion in the judicial forum, on the ground, to quote the language of the Supreme Court, that “the respect due to coequal and independent departments requires the judicial department to act upon this assurance.”



So far as any necessary conclusion is concerned, it might fairly have been said, with us, as it is said in Europe, that the real question in all these cases is not whether the act is constitutional, but whether its constitutionality can properly be brought in question before a given tribunal. Could Marshall have had to deal with this great question, in answer to Chief Justice Gibson's powerful opinion in *Eakin v. Raub*, in 1825,<sup>1</sup> instead of deciding it without being helped or hindered by any adverse argument at all, as he did, we should have had a far higher exhibition of his powers than the case now affords.<sup>2</sup>

<sup>1</sup> 12 Serg. & Rawle, 830; s. c. 1 Thayer's Const. Cases, 133.

<sup>2</sup> As to this general subject see "Origin and Scope of the American Doctrine of Constitutional Law," 7 *Harvard Law Review*, 129. Compare the remark of Lord John Russell: "Every political constitution, in which different bodies share the supreme power, is only enabled to exist by the forbearance of those among whom this power is distributed." I quote this from the motto of Woodrow Wilson's fifth chapter in his *Congressional Government*.

## CHAPTER V

### THE WORKING OF OUR SYSTEM OF CONSTITUTIONAL LAW

I HAVE drawn attention to the immense service that Chief Justice Marshall rendered to his country in the field of constitutional law, and have considered a few of the cases. Since his time not twice the length of his term of thirty-four years has gone by, but more than five times the number of volumes that sufficed for the opinions of the Supreme Court during his period is required for those of his successors on the bench. Nor does even that proportion indicate the increase in the quantity of the court's business which is referable to this particular part of the law. It has enormously increased. When one reflects upon the multitude, variety, and complexity of the questions relating to the regulation of interstate commerce, upon the portentous and ever

increasing flood of litigation to which the Fourteenth Amendment has given rise; upon the new problems in business, government, and police which have come in with steam and electricity, and their ten thousand applications; upon the growth of corporations and of wealth, the changes of opinion on social questions, such as the relation of capital and labor, and upon the recent expansions of our control over great and distant islands, — we seem to be living in a different world from Marshall's.

Under these new circumstances, what is happening in the region of constitutional law? Very serious things, indeed.

The people of the States, when making new constitutions, have long been adding more and more prohibitions and restraints upon their legislatures. The courts, meantime, in many places, enter into the harvest thus provided for them with a light heart, and too promptly and easily proceed to set aside legislative acts. The legislatures are growing accustomed to this distrust, and more and more readily incline to justify it,

and to shed the consideration of constitutional restraints, — certainly as concerning the exact extent of these restrictions, — turning that subject over to the courts; and, what is worse, they insensibly fall into a habit of assuming that whatever they can constitutionally do they may do, — as if honor and fair dealing and common honesty were not relevant to their inquiries.

The people, all this while, become careless as to whom they send to the legislature; too often they cheerfully vote for men whom they would not trust with an important private affair, and when these unfit persons are found to pass foolish and bad laws, and the courts step in and disregard them, the people are glad that these few wiser gentlemen on the bench are so ready to protect them against their more immediate representatives.

From these causes there has developed a vast and growing increase of judicial interference with legislation. This is a very different state of things from what our fathers contemplated, a century and more ago, in

framing the new system. Seldom, indeed, as they imagined, under our system, would this great, novel, tremendous power of the courts be exerted, — would this sacred ark of the covenant be taken from within the veil. Marshall himself expressed truly one aspect of the matter, when he said in one of the later years of his life: "No questions can be brought before a judicial tribunal of greater delicacy than those which involve the constitutionality of legislative acts. If they become indispensably necessary to the case, the court must meet and decide them; but if the case may be determined on other grounds, a just respect for the legislature requires that the obligation of its laws should not be unnecessarily and wantonly assailed." And again, a little earlier than this, he laid down the one true rule of duty for the courts. When he went to Philadelphia at the end of September, in 1831, on that painful errand of which I have spoken, in answering a cordial tribute from the bar of that city he remarked that if he might be permitted to claim for himself and his asso-

ciates any part of the kind things they had said, it would be this, that they had "never sought to enlarge the judicial power beyond its proper bounds, nor feared to carry it to the fullest extent that duty required."

That is the safe twofold rule ; nor is the first part of it any whit less important than the second ; nay, more ; to-day it is the part which most requires to be emphasized. For just here comes in a consideration of very great weight. Great and, indeed, inestimable as are the advantages in a popular government of this conservative influence, — the power of the judiciary to disregard unconstitutional legislation, — it should be remembered that the exercise of it, even when unavoidable, is always attended with a serious evil, namely, that the correction of legislative mistakes comes from the outside, and the people thus lose the political experience, and the moral education and stimulus that come from fighting the question out in the ordinary way, and correcting their own errors. If the decision in *Munn v. Illinois* and the "Granger Cases," twenty-five years ago, and

in the "Legal Tender Cases," nearly thirty years ago, had been different; and the legislation there in question, thought by many to be unconstitutional and by many more to be ill-advised, had been set aside, we should have been saved some trouble and some harm. But I venture to think that the good which came to the country and its people from the vigorous thinking that had to be done in the political debates that followed, from the infiltration through every part of the population of sound ideas and sentiments, from the rousing into activity of opposite elements, the enlargement of ideas, the strengthening of moral fibre, and the growth of political experience that came out of it all, — that all this far more than outweighed any evil which ever flowed from the refusal of the court to interfere with the work of the legislature.

The tendency of a common and easy resort to this great function, now lamentably too common, is to dwarf the political capacity of the people, and to deaden its sense of moral responsibility. It is no light thing to do that.

What can be done? It is the courts that can do most to cure the evil; and the opportunity is a very great one. Let them resolutely adhere to first principles. Let them consider how narrow is the function which the constitutions have conferred on them,—the office merely of deciding litigated cases; how large, therefore, is the duty intrusted to others, and above all to the legislature. It is that body which is charged, primarily, with the duty of judging of the constitutionality of its work. The constitutions generally give them no authority to call upon a court for advice; they must decide for themselves, and the courts may never be able to say a word. Such a body, charged, in every State, with almost all the legislative power of the people, is entitled to the most entire and real respect; is entitled, as among all rationally permissible opinions as to what the constitution allows, to its own choice. Courts, as has often been said, are not to think of the legislators, but of the legislature,—the great, continuous body itself, abstracted from all the transi-



tory individuals who may happen to hold its power. It is this majestic representative of the people whose action is in question, a coördinate department of the government, charged with the greatest functions, and invested, in contemplation of law, with whatsoever wisdom, virtue, and knowledge the exercise of such functions requires.

To set aside the acts of such a body, representing in its own field, which is the very highest of all, the ultimate sovereign, should be a solemn, unusual, and painful act. Something is wrong when it can ever be other than that. And if it be true that the holders of legislative power are careless or evil, yet the constitutional duty of the court remains untouched; it cannot rightly attempt to protect the people, by undertaking a function not its own. On the other hand, by adhering rigidly to its own duty, the court will help, as nothing else can, to fix the spot where responsibility lies, and to bring down on that precise locality the thunderbolt of popular condemnation. The judiciary, to-day, in dealing with the acts of their coördinate

legislators, owe to the country no greater or clearer duty than that of keeping their hands off these acts wherever it is possible to do it. For that course — the true course of judicial duty always — will powerfully help to bring the people and their representatives to a sense of their own responsibility. There will still remain to the judiciary an ample field for the determinations of this remarkable jurisdiction, of which our American law has so much reason to be proud ; a jurisdiction which has had some of its chief illustrations and its greatest triumphs, as in Marshall's time, so in ours, while the courts were refusing to exercise it.

## CHAPTER VI

### LETTERS OF MARSHALL

No systematic attempt seems ever to have been made to collect Marshall's letters. It should be done. Only a few of his family letters have yet found their way into print. One of them, to his wife, is quoted in a previous page. In another to her, written on March 9, 1825, referring to the inauguration of President John Quincy Adams, he says: "I administered the oath to the President in the presence of an immense concourse of people, in my new suit of domestic manufacture. He, too, was dressed in the same manner, though his clothes were made at a different establishment. The cloth is very fine and smooth."

In a letter of December 7, 1834,<sup>1</sup> to his grandson, "Mr. John Marshall, jr.," he gives the boy some advice about writing

<sup>1</sup> *The Nation*, February 7, 1901.

which is a good commentary on the extraordinary neatness and felicity, the close fit, of his own clear, compact, and simple style: —

“The man who by seeking embellishment hazards confusion is greatly mistaken in what constitutes good writing. The meaning ought never to be mistaken. Indeed, the readers should never be obliged to search for it. The writer should always express himself so clearly as to make it impossible to misunderstand him. He should be comprehended without an effort. The first step towards writing and speaking clearly is to think clearly. Let the subject be perfectly understood, and a man will soon find words to convey his meaning to others.”

A letter to James Monroe, dated Richmond, December 2, 1784, was written while Marshall was a member of the House of Delegates. He writes: “Not a bill of public importance, in which an individual was not particularly interested, has passed. The exclusive privilege given to Rumsey and his assigns to build and navigate his new in-

vented boats is of as much, perhaps more, consequence than any other bill we have passed. We have rejected some which, in my conception, would have been advantageous to this country. Among these I rank the bill for encouraging intermarriage with the Indians. Our prejudices, however, oppose themselves to our interests, and operate too powerfully for them. . . .

"I shewed my father [then, probably, living in Kentucky] that part of your letter which respects the western country. He says he will render you every service of the kind you mention which is within his power with a great deal of pleasure. He says, though, that Mr. Humphrey Marshall, a cousin and brother of mine,<sup>1</sup> is better acquainted with the lands and would be better enabled to choose for your advantage than he would. If, however, you wish rather to depend on my father I presume he may avail himself of the knowledge of his son-in-law. I do not know what to say to your scheme of selling out. If you can execute it you will

<sup>1</sup> He married John Marshall's sister.

have made a very capital sum ; if you can retain your lands you will be poor during life unless you remove to the western country, but you will have secured for posterity an immense fortune. I should prefer the selling business, and if you adopt it I think you have fixed on a very proper price.

“Adieu. May you be very happy is the wish of your  
J. MARSHALL.”

In another letter to Monroe, while the latter was Madison's Secretary of State, dated Richmond, June 25, 1812, just as the war was beginning, he says : —

“On my return to-day from my farm, where I pass a considerable portion of my time in *laborious relaxation*, I found a copy of the message of the President, of the 1st inst., accompanied by the report of the Committee of Foreign Relations and the declaration of war against Britain, under cover from you.

“Permit me to subjoin to my thanks for this mark of your attention my fervent wish that this momentous measure may, in its

operation on the interest and honor of our country, disappoint only its enemies.

“Whether my prayer be heard or not, I shall remain with respectful esteem,

“Your obedient servant,

“J. MARSHALL.”

When Marshall went to France as envoy in 1797, he wrote several long and interesting letters to Washington, acquainting him with whatever foreign intelligence might interest him.<sup>1</sup> The following passages from the first letter, a very long one, will show the interest of these papers, and the exactness of the information they convey:—

“THE HAGUE, 15th Sept., 1797.

“DEAR SIR,—The flattering evidences I have received of your favorable opinion, which have made on my mind an impression only to wear out with my being, added to a conviction that you must feel a deep interest in all that concerns a country to

<sup>1</sup> These letters were printed in 1897 in the *American Hist. Review*, ii. 294. I was not aware of their ever having been printed, until after these pages were in type.

whose service you have devoted so large a portion of your life, induce me to offer you such occasional communications as, while in Europe, I may be enabled to make, and induce a hope that the offer will not be deemed an unacceptable or unwelcome intrusion.

“Until our arrival in Holland we saw only British and neutral vessels. This added to the blockade of the Dutch fleet in the Texel, of the French fleet in Brest, and of the Spanish fleet in Cadiz, manifests the entire dominion which one nation at present possesses over the seas. By the ships of war which met us we were three times visited, and the conduct of those who came on board was such as would proceed from general orders to pursue a system calculated to conciliate America. Whether this be occasioned by a sense of justice and the obligations of good faith, or solely by the hope that the perfect contrast which it exhibits to the conduct of France may excite keener sensations at that conduct, its effects on our commerce are the same.



“The situation of Holland is truly interesting. Though the face of the country still exhibits a degree of wealth and population still unequaled in any part of Europe, its decline is visible. The great city of Amsterdam is in a state of blockade. More than two thirds of its shipping lie unemployed in port. Other seaports suffer, though not in so great a degree. In the mean time the requisitions made upon them are enormous. They have just completed the payment of the 100,000,000 of florins (equal to 40,000,000 of dollars) stipulated by treaty; they have sunk, on the first entrance of the French, a very considerable sum in assignats; they made large contributions in specifics, and they pay, feed, and clothe an army estimated, as I am informed, at near three times its real number. It is supposed that France has by various means drawn from Holland about 60,000,000 of dollars. This has been paid, in addition to the natural expenditures, by a population of less than 2,000,000. Nor, should the war continue, can the contributions of Holland stop here-

The increasing exigencies of France must inevitably increase her demands on those within her reach.

. . . . .  
“The political opinions which have produced the rejection of the Constitution, and which, as it would seem, can only be entertained by intemperate and ill-informed minds, unaccustomed to a union of theory and practice of liberty, must be associated with a general system which if brought into action will produce the same excesses here which have been so justly deplored in France. The same materials exist, though not in so great a degree. They have their clubs, they have a numerous poor, and they have enormous wealth in the hands of a minority of the nation. On my remarking this to a very rich and intelligent merchant of Amsterdam, and observing that if one class of men withdrew itself from public duties and offices it would be immediately succeeded by another, which would acquire a degree of power and influence that might be exercised to the destruction of those who had retired

from society, he replied that the remark was just, but that they relied on France for a protection from those evils which she had herself experienced. That France would continue to require great supplies from Holland, and knew its situation too well to permit it to become the prey of anarchy. That Holland was an artificial country acquired by persevering industry, and which could only be preserved by wealth and order. That confusion and anarchy would banish a large portion of that wealth, would dry up its sources, and would entirely disable them from giving France that pecuniary aid she so much needed. That under this impression many who, though friendly to the revolution, saw with infinite mortification French troops garrison the towns of Holland, would now see their departure with equal regret. Thus they willingly relinquished national independence for individual safety. What a lesson to those who would admit foreign influence into the United States! ". . .

The condition of affairs in Paris at that time is illustrated by the fact that Marshall's

later letters, written from there, were not signed; and that they allude to the action of himself and his associates in the third person. Thus, writing from Paris, October 24, 1797, in the character of an anonymous private American to an unnamed correspondent, he says : —

“Causes which I am persuaded you have anticipated forbid me to allow that free range of thought and expression which could alone apologize for the intrusive character my letters bear. Having, however, offered what I cannot furnish, I go on to substitute something else perhaps not worth receiving. . . .

“Our ministers have not yet, nor do they seem to think it certain that they will be received. Indeed they make arrangements which denote an expectation of returning to America immediately. The captures of our vessels seem to be only limited by the ability to capture. That ability is increasing, as the government has let out to hardy adventurers the national frigates. Among those who plunder us, who are most active in this

infamous business, and most loud in vociferating criminations equally absurd and untrue, are some unprincipled apostates who were born in America. The sea rovers by a variety of means seem to have acquired great influence in the government. This influence will be exerted to prevent an accommodation between the United States and France, and to prevent any regulations which may intercept the passage of the spoils they have made on our commerce, to their pockets. The government, I believe, is but too well disposed to promote their views."

In a letter to Judge Peters, of Philadelphia, dated November 23, 1807, just after the Burr trial, after thanking his correspondent for a volume of "Admiralty Reports," he has something to say of that case:—

"I have as yet been able only to peep into the book, not to read many of the cases. I received it while fatigued, and occupied with the most unpleasant case which has ever been brought before a judge in this or, perhaps, in any other country which affected

to be governed by laws; since the decision of which I have been entirely from home. The day after the commitment of Colonel Burr for a misdemeanor I galloped to the mountains, whence I only returned in time to perform my North Carolina circuit, which terminates just soon enough to enable me to be here to open the court for the ancient dominion. Thus you perceive I have sufficient bodily employment to prevent my mind from perplexing itself about the attentions paid me in Baltimore and elsewhere. I wish I could have had as fair an opportunity to let the business go off as a jest here as you seem to have had in Philadelphia; but it was most deplorably serious, and I could not give the subject a different aspect by treating it in any manner which was in my power. I might, perhaps, have made it less serious to myself by obeying the public will, instead of the public law, and throwing a little more of the sombre upon others."

## CHAPTER VII

### MARSHALL AS A CITIZEN AND A NEIGHBOR

THERE is more to be said of Marshall's private and personal life. After he went on the bench, his principal non-judicial work, in the nature of public service, seems to have been writing the "Life of Washington," with the later revision and reconstruction of that work, and his activity in a few matters of not too partisan a sort, such as were likely to engage the attention of a public-spirited citizen.

In 1813, at a meeting of the citizens of Richmond, he was appointed member of a Committee of Vigilance, to aid in defending the city against attack from the British. On June 28 he made a report, for a sub-committee, that it was inexpedient to undertake to fortify the city. After stating the topographical and other reasons for such an opinion, the report goes on thus: "Your committee

are too conscious of their destitution of professional skill to advance with any confidence the opinion they have formed ; but the resolution under which they act having made it their duty to give an opinion, they say, though with much diffidence, that they do not think any attempt to fortify the city advisable. It is to be saved by operations in the open field, by facing the enemy with a force which may deter him from any attempt to penetrate the interior of our country, and which may impress him with the danger of separating himself from his ships. If this protection cannot be afforded, Richmond must share the fate of other places which are in similar circumstances. Throughout the world, open towns belong to the army which is master of the country. . . . If the militia be put into the best condition for service, if the light artillery be well manned and supplied with horses, so as to move with celerity to any point where its services may be required ; if the cavalry be kept entire and in active service ; if the precaution of supplying in sufficient quantity all the im-



plements of war be taken, your committee hope and believe that this town will have no reason to fear the invading foe." <sup>1</sup>

In those efforts on the part of some of the leaders of Virginia and the South, early in the century, to rid themselves of slavery, to which we at the North have never done sufficient justice, Marshall took an active part.

The American Colonization Society was organized in 1816 or 1817, with Bushrod Washington for president. In 1823 an auxiliary society was organized at Richmond, of which Marshall was president, an office which he held nearly or quite up to the time of his death. It is interesting to observe that one of the plans for colonization was to have worked out the abolition of slavery in Virginia in the year 1901. Of slavery Marshall wrote to a friend, in 1826 : " I concur with you in thinking that nothing portends more calamity and mischief to the Southern States than their slave population. Yet they seem to cherish the evil, and to view with

<sup>1</sup> *The Virginia Magazine of History*, vii. 233.

immovable prejudice and dislike everything which may tend to diminish it. I do not wonder that they should resist any attempt, should one be made, to interfere with the rights of property, but they have a feverish jealousy of measures which may do good without the hazard of harm, that, I think, very unwise."

In 1828, Marshall presided, in Virginia, over a convention to promote internal improvements. On this subject he held and freely expressed views, such as are now generally entertained, as to the power of the general government, and the expediency of exerting them.<sup>1</sup>

In 1829, he allowed himself to be elected to the Virginia convention for revising the state constitution, and took an active part in the debates. "Tall, in a long surtout of blue, with a face of genius and an eye of fire," is the description that is given of him in the convention. On several questions he influenced greatly the course of the convention, especially in continuing, for a score of

<sup>1</sup> Chancellor Kent in *New York Review*, 348, 349.

years to come, the judicial tenure of office during good behavior.

Marshall's membership of the society of Free Masons is sometimes spoken of. It should be said that he lived to condemn that organization. During the political excitement which followed the abduction of Morgan, he was asked for information as to some praise of Freemasonry which had been publicly attributed to him, and replied, in October, 1833, that he was not particularly interested in the anti-masonic excitement. "The agitations which convulse the North did not pass the Potomac. Consequently . . . I felt no inclination to volunteer in a distant conflict, in which the wounds that might be received would not be soothed by the consoling reflection that he suffered in the performance of a necessary duty." And he added that he had "never affirmed that there was any positive good or ill in the institution itself." This cautious letter is illustrated by an earlier one, in July, 1833, in which, writing confidentially to Edward Everett, he says that he became a Mason.

soon after he entered the army, and afterwards continued in the society because his neighbors did. "I followed the crowd for a time, without attaching the least importance to its object or giving myself the trouble to inquire why others did. It soon lost its attraction, and though there are several lodges in the city of Richmond, I have not been in one of them for more than forty years, except on an invitation to accompany General Lafayette, nor have I been a member of one of them for more than thirty. It was impossible not to perceive the useless pageantry of the whole exhibition." And he adds that he has become convinced "that the institution ought to be abandoned, as one capable of producing much evil and incapable of producing any good which might not be effected by safe and open means." <sup>1</sup>

As to Marshall's religious affiliations, he was a regular and devoted attendant, all his life, of the Episcopal Church, in which he

<sup>1</sup> *Anti-masonic Pamphlets*, Harvard College Library, No. 12, p. 18; *ib.* No. 9.

was brought up; taking an active part in the services and the responses, and kneeling in prayer, we are told, even when the pews were so narrow that his tall form had to be accommodated by the projection of his feet into the aisle. His friend, Bishop Meade, the Episcopal bishop of Virginia, states that he was never a communicant in that church; and he quotes a letter from an Episcopal clergyman who often visited Mrs. Harvie, Marshall's only daughter, in her last illness, and who reports from her the statement that, during the last months of his life, he told her "that the reason why he never communed was that he was a Unitarian in opinion, though he never joined their society." It is added, however, in the same letter, that Mrs. Harvie, a person "of the strictest probity, the most humble piety, and the most clear and discriminating mind," also said that, during these last months, Marshall read Keith on Prophecy, and was convinced by that work, and the fuller investigation to which it led, of the supreme divinity of Jesus, and wished to commune,

but thought it his duty to do it publicly ; and while waiting for the opportunity, died.

The reader of such a statement seems to perceive or to conjecture an anxiety to relieve the memory of the Chief Justice of an opprobrium. Whatever the exact fact may be about this late change in opinion, there is little occasion to be surprised that Marshall shared, during his active life, the opinions of his friend Judge Story. The genuineness and the simplicity of Marshall's lifelong piety are indicated by another statement reported from Mrs. Harvie : " Her father told her that he never went to bed without concluding his prayer with those which his mother taught him when a child, viz. the Lord's prayer and the prayer beginning, ' Now I lay me down to sleep.' "

Marshall was a man of vigorous physique. " He was always," says a descendant,<sup>1</sup> " devoted to walking, but more especially before breakfast in the early morning. A venerable professor I met in Washington told me that, when he was a boy, regularly every morning

<sup>1</sup> Mrs. Hardy, 8 *Green Bag*, 487.

at seven o'clock, when he was on his way to school, he met the Chief Justice returning from a long walk. He walked rapidly always. Hon. Horace Binney says: 'After doing my best one morning to overtake Chief Justice Marshall, in his quick march to the Capitol, when he was nearer to eighty than seventy, I asked him to what cause in particular he attributed that strong and quick step, and he replied that he thought it was most due to his commission in the army of the Revolution, in which he had been a regular foot practitioner for six years.'"

We often hear of the Chief Justice at his "Quoit Club." He was a famous player at quoits. A club had been formed by some of the early Scotch settlers of Richmond, and it came to include among its members leading men of the city, such as Marshall, Wirt, Nicholas, Call, Munford, and others. Chester Harding, the artist who painted the full-length portrait of Marshall that hangs in the Boston Athenæum, tells us of seeing him at the Quoit Club. Fortunately, language does not, like paint, limit the artist

to a single moment of time. He gives us the Chief Justice in action. Marshall was then attending the Virginia Constitutional Convention, which sat from October, 1829, to January, 1830. The Quoit Club used to meet every week in a beautiful grove, about a mile from the city. Harding went early. "I watched," he says, "for the coming of the old chief. He soon approached, with his coat on his arm and his hat in his hand, which he was using as a fan. He walked directly up to a large bowl of mint julep, which had been prepared, and drank off a tumblerful of the liquid, smacking his lips, and then turned to the company with a cheerful 'How are you, gentlemen?' He was looked upon as the best pitcher of the party, and could throw heavier quoits than any other member of the club. The game began with great animation. There were several ties; and before long I saw the great Chief Justice of the United States down on his knees, measuring the contested distance with a straw, with as much earnestness as if it had been a point of law; and if he proved



to be in the right, the woods would ring with his triumphant shout." <sup>1</sup>

<sup>1</sup> In speaking of this same Club, Mr. G. W. Munford says: "We have seen Mr. Marshall, in later times, when he was Chief Justice of the United States, on his hands and knees, with a straw and a penknife, the blade of the knife stuck through the straw, holding it between the edge of the quoit and the hub; and when it was a very doubtful question, pinching or biting off the ends of the straw, until it would fit to a hair."

James K. Paulding has preserved an entertaining account of a game, in 1820, when Jarvis, the artist, was present, playing, apparently on the same side with the Chief Justice. "I remember," he says, "in the course of the game, and when the parties were nearly at a tie, that some dispute arose as to the quoit nearest the meg. The Chief Justice was chosen umpire between the quoit belonging to Jarvis and that of Billy Haxall. The judge bent down on one knee, and with a straw essayed the decision of this important question on which the fate of the game in a great measure depended. After nicely measuring, and frequently biting off the end of the straw, 'Gentlemen,' said he, 'you will perceive this quoit would have it, but the rule of the game is to measure from the visible iron. Now that clod of dirt hides almost half an inch. But, then he has a right to the nearest part of the meg; and here, as you will perceive, is a splinter, which belongs to and is part of the meg, as much as the State of Virginia is a part of the Union. This is giving Mr. Haxall a great advantage; but, notwithstanding, in my opinion, Jarvis has it by at least the sixteenth part of an inch, and so I decide, like a just judge, in my own favor.'"

<sup>2</sup> *Lippincott's Magazine*, 623, 626. It is said that he was often appointed thus to be judge in his own case.

An entertaining account has been preserved<sup>1</sup> of a meeting of the club, held, apparently, while Marshall was still at the bar, at which he and Wickham — a leading Virginia lawyer, one of the counsel of Aaron Burr — were the caterers. At the table Marshall announced that at the last meeting two members had introduced politics, a forbidden subject, and had been fined a basket of champagne, and that this was now produced, as a warning to evil-doers; as the club seldom drank this article, they had no champagne glasses, and must drink it in tumblers. Those who played quoits retired, after a while, for a game. Most of the members had smooth, highly polished brass quoits. But Marshall's were large, rough, heavy, and of iron, such as few of the members could throw well from hub to hub. Marshall himself threw them with great success and accuracy, and often "rang the meg." On this occasion Marshall and the Rev. Mr. Blair led the two parties of players. Marshall played first, and rang the

<sup>1</sup> See *The Two Parsons*, by G. W. Munford.

meg. Parson Blair did the same, and his quoit came down plumply on top of Marshall's. There was uproarious applause, which drew out all the others from the dinner; and then came an animated controversy as to what should be the effect of this exploit. They all returned to the table, had another bottle of champagne, and listened to arguments, one from Marshall, *pro se*, and one from Wickham for Parson Blair. The company decided against Marshall. His argument is a humorous companion piece to any one of his elaborate judicial opinions. He began by formulating the question, "Who is winner when the adversary quoits are on the meg at the same time?" He then stated the facts, and remarked that the question was one of the true construction and application of the rules of the game. The one first ringing the meg has the advantage. No other can succeed who does not begin by displacing this first one. The parson, he willingly allowed, deserves to rise higher and higher in everybody's esteem; but then he must n't do it by getting on

another's back in this fashion. That is more like leapfrog than quoits. Then, again, the legal maxim is, *Cujus est solum, ejus est usque ad cœlum*, — his own right as first occupant extends to the vault of heaven; no opponent can gain any advantage by squatting on his back. He must either bring a writ of ejectment, or drive him out *vi et armis*. And then, after further argument of the same sort, he asked judgment, and sat down amidst great applause.

Mr. Wickham then rose, and made an argument of a similar pattern. No rule, he said, requires an impossibility. Mr. Marshall's quoit is twice as large as any other; and yet it flies from his arm like the iron ball at the Grecian games from the arm of Ajax. It is an iron quoit, unpolished, jagged, and of enormous weight. It is impossible for an ordinary quoit to move it. With much more of the same sort, he contended that it was a drawn game. After very animated voting, designed to keep up the uncertainty as long as possible, it was so decided. Another trial was had, and Marshall clearly won.

All his life he played this game. There is an account of a country barbecue in the mountain region, where a casual guest saw him, then an old man, emerge from a thicket which bordered a brook, carrying a pile of flat stones as large as he could hold between his right arm and his chin. He stepped briskly up to the company and threw them down. "There! Here are quoits enough for us all."

Of Marshall's simple habits, remarkable modesty, and engaging simplicity of conduct and demeanor, every one who knew him speaks. These things were in the grain, and outlasted all the wear and tear of life. "What was it in him which most impressed you?" asked one of his descendants, now a distinguished judge,<sup>1</sup> of an older relative who had known him. "His humility," was her answer. "With Marshall," wrote President Quincy, "I had considerable acquaintance during the eight years I was member of Congress, from 1805 to 1813, played chess

<sup>1</sup> Mr. Justice Keith, now President of the Virginia Court of Appeals.

with him, and never failed to be impressed with the frank, cordial, childlike simplicity and unpretending manner of the man, of whose strength and breadth of intellectual power I was . . . well apprised."

"Nothing was more usual," we are told, as regards his life in Richmond, "than to see him returning from market, at sunrise, with poultry in one hand and a basket of vegetables in the other." And, again, some one speaks of meeting him on horseback, at sunrise, with a bag of seeds before him, on his way to his farm, three or four miles out of town. It was of this farm that he wrote to James Monroe, his old friend and school-mate, about passing so much time in "*laborious relaxation*." The italics are his own.

In speaking of Marshall's personal qualities and ways, I must quote from those exquisite passages in Judge Story's address, delivered in the fall of 1835, to the Suffolk bar, in which his own true affection found expression: "Upon a first introduction he would be thought to be cold and reserved; but he was neither the one nor the other. It

was simply a habit of easy taciturnity, watching, as it were, his own turn to follow the line of conversation, and not to presume to lead it. . . . Meet him in a stage-coach as a stranger, and travel with him a whole day, and you would only be struck with his readiness to administer to the accommodation of others, and his anxiety to appropriate least to himself. Be with him the unknown guest at an inn, and he seemed adjusted to the very scene; partaking of the warm welcome of its comforts, whenever found; and if not found, resigning himself without complaint to its meanest arrangements. . . . He had great simplicity of character, manners, dress, and deportment, and yet with a natural dignity that suppressed impertinence and silenced rudeness. His simplicity . . . had an exquisite naïveté, which charmed every one, and gave a sweetness to his familiar conversation approaching to fascination. The first impression of a stranger, upon his introduction to him, was generally that of disappointment. It seemed hardly credible that such simplicity should be the accompaniment

of such acknowledged greatness. The consciousness of power was not there; the air of office was not there; there was no play of the lights or shades of rank, no study of effect in tone or bearing."

Add to this what Judge Story said from the bench, in receiving the resolutions of the Bar of the Supreme Court after Marshall's death: "But, above all, he was the ornament of human nature itself, in the beautiful illustrations which his life constantly presented, of its most attractive graces, and its most elevated attributes." <sup>1</sup>

Of Marshall's appearance on the bench we have a picture in one of Story's letters from Washington, while he was at the bar. He is writing in 1808, the year after the Burr trial. "Marshall," he says, "is of a tall, slender figure, not graceful or imposing, but erect and steady. His hair is black, his eyes small and twinkling, his forehead rather low, but his features are in general harmonious. His manners are plain, yet dignified; and an unaffected modesty diffuses itself through all

<sup>1</sup> 10 Peters's Reports, vii.



his actions. His dress is very simple, yet neat; his language chaste, but hardly elegant; it does not flow rapidly, but it seldom wants precision. In conversation he is quite familiar, but is occasionally embarrassed by a hesitancy and drawling. . . . I love his laugh, — it is too hearty for an intriguer, — and his good temper and unwearied patience are equally agreeable on the bench and in the study.”

Daniel Webster, in 1814, while he was a member of Congress from New Hampshire, wrote to his brother: “There is no man in the court that strikes me like Marshall. He is a plain man, looking very much like Colonel Adams, and about three inches taller. I have never seen a man of whose intellect I had a higher opinion.”

In the year 1808, when Judge Story wrote what has just been quoted, Marshall was sketched in chalk by St. Mémin. It is a beautiful portrait, which its present owner, Mr. Thomas Marshall Smith, of Baltimore, John Marshall’s great-grandson, has now generously allowed to be copied for the use of the public.

It was in 1830 that Chester Harding painted for the Boston Athenæum the full-length portrait, of which, a little later, he made the replica, afterwards purchased, by subscription, for the Harvard Law School. "I consider it," says Harding, "a good picture.<sup>1</sup> I had great pleasure in painting *the whole* of such a man. . . . When I was ready to draw the figure into his picture, I asked him, in order to save time, to come to my room in the evening. . . . An evening was appointed ; but he could not come until after the 'consultation,' which lasts until about eight o'clock." It will be remembered that the judges, at that time, used to lodge together, in one house. "It was a warm evening," continues Harding, "and I was standing on my steps waiting for him, when he soon made his appearance, but, to my surprise, without a hat. I showed him into my studio, and stepped

<sup>1</sup> The half-length, sitting portrait of Marshall, in the dining-hall at Cambridge, was painted by Harding, in 1828, for the Chief Justice himself ; and by him given to Judge Story, "to be preserved, when I shall sleep with my fathers, as a testimonial of sincere and affectionate friendship." Story bequeathed it to the college.

back to fasten the front door, when I encountered [several gentlemen] who knew the judge very well. They had seen him passing by their hotel in his hatless condition, and with long strides, as if in great haste, and had followed, curious to know the cause of such a strange appearance. . . . He said that the consultation lasted longer than he expected, and he hurried off as quickly as possible to keep his appointment with me." He declined the offer of a hat on his return: "Oh no, it is a warm night; I shall not need one."

A good many artists tried their hands on the Chief Justice, and with every sort of result. Some depicted a dull and wooden person, some a worthy but feeble one. Other portraits, commended for their likeness to the original, differ much in what they represent.<sup>1</sup>

<sup>1</sup> See an interesting article by Mr. Justice Bradley, of the Supreme Court of the United States, on portraits of Marshall, in the *Century Magazine* for September, 1889, (vol. 38, page 778.) A portrait by Jarvis, valued as a work of art and as a good likeness, is in the possession of Mr. Justice Gray. Mr. Justice Bradley appears to be

In the written descriptions of him, also, one needs to compare several before he can feel much assurance of the true image. In an anonymous account of him, preserved in Van Santvoord's "Lives of the Chief Justices,"<sup>1</sup> the reader seems to perceive the humorous exaggerations of an entertaining and practiced writer, but, taken with due allowance, the description may well be preserved.

"As to face and figure," says this account, "nature had been equally little at pains to stamp, with any princely effigy of what pleases, the virgin gold of which she had composed his head and heart. Except that his countenance was thoughtful and benignant, it had nothing about it that would have commanded a second look. Separately his features were but indifferent, jointly they were no more than commonplace. Then as to stature, shape, and carriage, there was

wrong in saying that there is a full-length of Marshall at Washington and Lee University. There are two portraits of him there, but, as I am assured, no full-length.

<sup>1</sup> P. 363, n.

nothing in him that was not the opposite of commanding or prepossessing; he was tall, yet his height was without the look of either strength or lightness, and gave neither dignity nor grace. His body seemed as ill as his mind well compacted; he not only was without proportion, but of members singularly knit, that dangled from each other and looked half dislocated. Habitually he dressed very carelessly; in the garb, I should not dare to say in the mode, of the last century. You would have thought he had on the old clothes of a former generation, not made for him by even some superannuated tailor of the period, but gotten from the wardrobe of some antiquated slop-shop of second-hand raiment. Shapeless as he was, he would probably have defied all fitting, by whatever skill of the shears; judge then how the vestments of an age when, apparently, coats and breeches were cut for nobody in particular, and waistcoats were almost dressing gowns, sat upon him."

Such a statement should be supplemented by what one of his family said of him: "The

descriptions of his dress are greatly exaggerated ; he was regardless of style and fashion, but all those who knew him best testified to the extreme neatness of his attire." <sup>1</sup>

<sup>1</sup> Mrs. Hardy, quoting her grandmother, in 8 *Green Bag*, 484.

## CHAPTER VIII

### HIS LAST DAYS

THE year 1831 was a sad one for Marshall. The greatest apprehensions were felt for his health. "Wirt," says John Quincy Adams in his diary, on February 13, 1831, "spoke to me, also, in deep concern and alarm at the state of Chief Justice Marshall's health." In the autumn he went to Philadelphia to undergo the torture of the operation of lithotomy, before the days of ether. It was the last operation performed by the distinguished surgeon, Dr. Physick. Another eminent surgeon, who assisted him, Dr. Randall, has given an account of this occasion, in which he says : —

"It will be readily admitted that, in consequence of Judge Marshall's very advanced age, the hazard attending the operation, however skillfully performed, was considerably increased. I consider it but an act of

justice, due to the memory of that great and good man, to state that, in my opinion, his recovery was in a great degree owing to his extraordinary self-possession, and to the calm and philosophical views which he took of his case, and the various circumstances attending it.

“It fell to my lot to make the necessary preparations. In the discharge of this duty I visited him on the morning of the day fixed on for the operation, two hours previously to that at which it was to be performed. Upon entering his room I found him engaged in eating his breakfast. He received me with a pleasant smile upon his countenance, and said: ‘Well, doctor, you find me taking breakfast, and I assure you I have had a good one. I thought it very probable that this might be my last chance, and therefore I determined to enjoy it and eat heartily.’ I expressed the great pleasure which I felt at seeing him so cheerful, and said that I hoped all would soon be happily over. He replied to this that he did not feel the least anxiety or uneasiness



respecting the operation or its results. He said that he had not the slightest desire to live, laboring under the sufferings to which he was then subjected; that he was perfectly ready to take all the chances of an operation, and he knew there were many against him; and that if he could be relieved by it he was willing to live out his appointed time, but if not, would rather die than hold existence accompanied with the pain and misery which he then endured.

“After he finished his breakfast I administered to him some medicine; he then inquired at what hour the operation would be performed. I mentioned the hour of eleven. He said, ‘Very well, do you wish me now for any other purpose, or may I lie down and go to sleep?’ I was a good deal surprised at this question, but told him that if he could sleep it would be very desirable. He immediately placed himself upon the bed, and fell into a profound sleep, and continued so until I was obliged to rouse him in order to undergo the operation. He exhibited the same fortitude, scarcely uttering a murmur,

throughout the whole procedure, which, from the peculiar nature of his complaint, was necessarily tedious."

From the patient over a thousand calculi were taken. He had a perfect recovery; nor did the disorder ever return.<sup>1</sup>

On Christmas Day of that year, as I have said, his wife died, the object of his tenderest affection ever since he had first seen her, more than fifty years before. The day before she died, she hung about his neck a locket with some of her hair. He wore it always, night and day; and, by his order, it was the last thing removed from his body when he died.<sup>2</sup>

It was at this period, in 1831 and 1832,

<sup>1</sup> My friend Dr. Horace Howard Furness, of Philadelphia, writes (and allows me to quote): "I remember hearing my father say that Dr. Physick told him, just after that operation of lithotomy, that he had 'washed the judge out as clean as a plate,' and that he went on to say that after the operation the strictest quiet was enjoined, not a muscle was to be moved; but what was his alarm on his next visit to see Judge Marshall sitting up in bed with paper and pencil on his knees, writing to his wife!"

<sup>2</sup> Marion Harland, *Old Colonial Homesteads*, 98.

that Inman's fine portrait of him, now hanging in the rooms of the Law Association of Philadelphia, was painted, for the bar of that city. A replica which Marshall himself bought for his daughter, is on the walls of the state library in Richmond. This portrait is regarded as the best of those painted in his later life. Certainly it best answers the description of him by an English traveler, who, seeing him often in the spring of 1835, remarked that "the venerable dignity of his appearance would not suffer in comparison with that of the most respected and distinguished-looking peer in the British House of Lords."<sup>1</sup>

After his recovery, in 1831, Marshall seems to have been in good health down to the early part of 1835. Then, we are told, he suffered "severe contusions" in the stage-coach in returning from Washington.<sup>2</sup>

<sup>1</sup> *Travels in North America*, by Hon. Charles Augustus Murray, — "the late Sir Charles Murray, at one time Master of the Household to the Queen, who, as a young man, was attached to the British Legation at Washington." — *The Spectator*, February 9, 1901, p. 199.

<sup>2</sup> Many a "severe contusion" must he have suffered in

His health now rapidly declined. He went again for relief to Philadelphia, and died there on July 6, 1835, of a serious disorder of the liver. He had missed from his bedside his oldest son, Thomas, for whom he had been asking. Upon the gravestone of that son, behind the old house at Oakhill, you may read the pathetic tragedy, withheld from his father, that accounts for this absence. While hastening to Philadelphia, at the end of June, he was passing through the streets of Baltimore, in the midst of a tempest, and was killed by the falling of a chimney in the storm.

The great Chief Justice was carried home with every demonstration of respect and reverence. He was buried by the side of

those primitive days, from upsets and joltings, in driving every year between Richmond and Washington, some 120 miles each way; from Richmond to Raleigh and back, in attending his North Carolina circuit, about 175 miles each way; and between Richmond and Oakhill, his country place, every summer, about 100 miles each way. For instance, in 1812, Cranch, the reporter, remarks that Marshall was not present at the beginning of the term, as he "received an injury by the oversetting of the stage-coach on his journey from Richmond."

his wife, in the Shockoe Hill Cemetery in Richmond. There, upon horizontal tablets, are two inscriptions of affecting simplicity, both written by himself. The first runs thus: "John Marshall, Son of Thomas and Mary Marshall, was born the 24th of September, 1755. Intermarried with Mary Willis Ambler, the 3d of January, 1783. Departed this life the [6th] day of July, 1835." The second, thus: "Sacred to the memory of Mrs. Mary Willis Marshall, Consort of John Marshall, Born the 13th of March, 1766. Departed this life the 25th of December, 1831. This stone is devoted to her memory by him who best knew her worth, And most deplores her loss."

Among the tributes to Chief Justice Marshall which were made in the months that followed his death, and in later times, nothing finer has been said than the heartfelt expression of the bar of his own circuit, at Richmond, in November, 1835. The resolutions of Mr. B. Watkins Leigh, unanimously adopted, recalled "the memory of

the venerable judge" who had presided there for more than thirty-four years "with such remarkable diligence in office, that until he was disabled by the disease which removed him from life, he was never known to be absent from the bench, during term time, even for a day, — with such indulgence to counsel and suitors that everybody's convenience was consulted but his own, — with a dignity, sustained without effort, and apparently without care to sustain it, to which all men were solicitous to pay due respect, — with such profound sagacity, such quick penetration, such acuteness, clearness, strength, and comprehension of mind, that in his hands the most complicated causes were plain, the weightiest and most difficult, easy and light, — with such striking impartiality and justice, and a judgment so sure, as to inspire universal confidence, so that few appeals were ever taken from his decisions, during his long administration of justice in this court, and those only in cases where he himself expressed doubt, — with such modesty that he seemed wholly unconscious of

his own gigantic powers, — with such equanimity, such benignity of temper, such amenity of manners, that not only none of the judges who sat with him on the bench, but no member of the bar, no officer of the court, no juror, no witness, no suitor, in a single instance, ever found or imagined, in anything said or done, or omitted by him, the slightest cause of offense.

“ His private life was worthy of the exalted character he sustained in public station. The unaffected simplicity of his manners ; the spotless purity of his morals ; his social, gentle, cheerful, disposition ; his habitual self-denial, and boundless generosity towards others ; the strength and constancy of his attachments, his kindness to his friends and neighbors ; his exemplary conduct in the relations of son, brother, husband, father ; his numerous charities ; his benevolence toward all men, and his ever active beneficence ; these amiable qualities shone so conspicuously in him, throughout his life, that highly as he was respected, he had the rare happiness to be yet more

beloved. He was, indeed, a bright example of the true wisdom which consists in the union of the greatest ability and the greatest virtue."

On the west side of the Capitol at Washington, midway between the staircases that ascend from the garden to the great building, and a little in advance, there is a colossal bronze figure of Marshall by the sculptor Story, the son of the great man's colleague and friend, — placed there in 1884. It is a very noble work of art, worthy of the subject and the place. The Chief Justice is sitting, clothed in his judicial robe, in the easy attitude of one engaged in expounding a subject of which he is master. The figure is leaning back in the chair with the head slightly inclining forward; the right arm rests on the arm of the chair, with the hand open and extended; the left hand, holding a scroll, lies easily on the other arm of the chair. The crossed legs are covered by the gown, while low shoes and buckles, and hair gathered in a queue, speak of life-



long habits. The solid and beautiful head, and the grave and collected dignity of the features and the whole composition are very noble, satisfactory, and ideally true.

The figure, standing, would be ten feet high. It sits seven feet high, and is raised upon a suitable pedestal, decorated with marble bas-reliefs of classical designs. These, if the truth were told, might well be spared, but the statue itself will fitly commemorate for many ages one of the greatest, noblest and most engaging characters in American history.

*Er. W. E. B.*

*10/16/05*

*10*

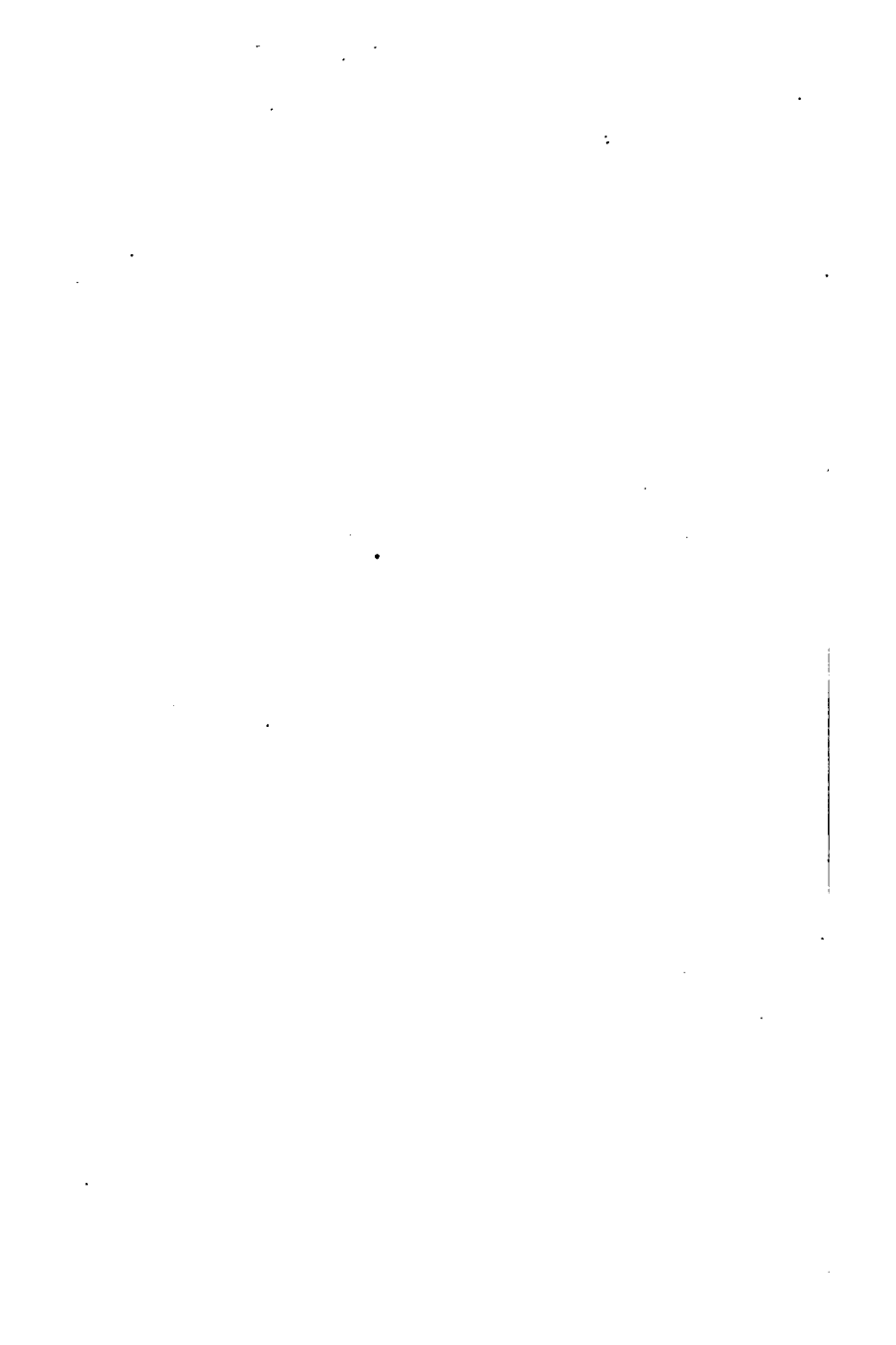
**The Riverside Press**

*Electrotyped and printed by H. O. Houghton & Co.  
Cambridge, Mass., U. S. A.*











## HARVARD LAW SCHOOL LIBRARY

This book is due on or before the date stamped below. Books must be returned to the Circulation Desk from which they were borrowed. **Non-receipt of an overdue notice does not exempt the user from a fine.**

~~FEB 10 2006~~

APR 29 2006



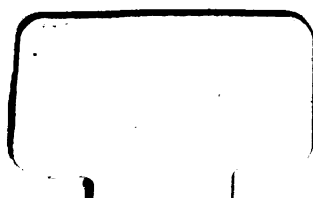


## HARVARD LAW SCHOOL LIBRARY

This book is due on or before the date stamped below. Books must be returned to the Circulation Desk from which they were borrowed. **Non-receipt of an overdue notice does not exempt the user from a fine.**

~~FEB 10 2006~~

APR 29 2006



## HARVARD LAW SCHOOL LIBRARY

This book is due on or before the date stamped below. Books must be returned to the Circulation Desk from which they were borrowed. **Non-receipt of an overdue notice does not exempt the user from a fine.**

[illegible]

**ONE SHILLING EACH.**

---

**WILSON'S  
LEGAL HANDY BOOKS.**

BY

**JAMES WALTER SMITH, Esq., LL.D.,**  
*Of the Inner Temple, Barrister-at-Law.*

---

**LAW OF BILLS, CHEQUES, NOTES, AND I O U's.**

**LAW OF BANKING:**

ITS PRINCIPLES, CUSTOMS, AND PRACTICE.

**LAW OF MASTER AND SERVANT,**  
EMPLOYER AND EMPLOYED.

**LAW OF PARTNERSHIP.**

**LAW OF JOINT STOCK COMPANIES.**

**LAW OF TRUSTEES.**

THEIR DUTIES AND LIABILITIES. By R. DENNY  
URLIN, Esq., of the Middle Temple, Barrister-at-Law.

**LAW OF PUBLIC MEETINGS.**

**TRADE MARKS: NEW LAW.** By JOHN PYM  
YEATMAN, Esq., Barrister-at-Law.

**LAW OF SHIPPING. 2s.**

**HUSBAND AND WIFE, MARRIAGE AND DIVORCE,  
PARENT AND CHILD. 2s. 6d.**

---

"**DR. WALTER SMITH** has rendered important service to society by the preparation of these concise, clear, and cheap expositions of the Law."—*Morning Post*.

Lo

Royal Exchange.

L 2

---

### **Hankey's Principles of Banking;**

Its Utility and Economy. With Remarks on the Working and Management of the Bank of England. By THOMSON HANKEY, Esq., formerly Governor of the Bank of England. Third Edition. Price 6s.

---

### **Hoare's Mensuration for the Million;**

Or, the Decimal System and its Applications to the Daily Employments of the Artisan and Mechanic. By CHARLES HOARE.

"This is a painstaking exposition of the many advantages derivable from the use of decimals; we therefore welcome it with all the cordiality due to those who simplify the process of calculation."—*Practical Mechanic*.

Tenth Edition. Price 1s.

---

### **Ferguson's Buyer's and Seller's Guide; or, Profit on Return.**

Showing at one view the Net Cost and Return Prices, with a Table of Discount. By ANDREW FERGUSON, Author of "Tables of Profit, Discount, Commission, and Brokerage." Net Profit on Returns. Price 1s.

---

### **Rickard's Practical Mining Familiarly explained. 2s. 6d.**

### **Smith's Legal Forms for Common Use,**

Being 200 Preambles, with Introductions and Notes, arranged under the following heads:—1. Bills and Notes—2. Securities—3. Receipts and Acknowledgments—4. Partnership—5. Tutors and Governesses—6. Landlord and Tenant—7. Arbitrations—8. County Court Forms—9. Conveyances—10. Marriage Settlements—11. Wills.—12. Miscellaneous. By JAMES WALTER SMITH, Esq., LL.D., of the Inner Temple, Barrister-at-Law. Ninth Thousand. Price 3s. 6d.; by post 3s. 8d.

---

### **Robinson's Share and Stock Tables:**

Comprising a set of Tables for Calculating the Cost of any number of Shares, at any Price from 1-16th of a pound sterling, or 1s. 3d. per Share, to £310 per Share in value; and from 1 to 500 Shares, or from £100 to £50,000 Stock.

Sixth Edition, price 5s., cloth.

---

### **Parnell's Land and Houses :**

The Investor's Guide to the Purchase of Freehold and Leasehold Ground Rents, Houses, and Lands, and various interests connected therewith, with Observations on the Management of the same, and Tables showing the Rate of Interest upon the Purchase-Money, &c. By JOHN PARNELL. Third Edition, now ready. Price 1s.

---

London: EFFINGHAM WILSON, Royal Exchange.

### **Rutter's Exchange Tables between England, India, and China.**

With new Intermediate Rates of thirty seconds of a Penny per Rupee, sixteenths of a Penny per Dollar, and one quarter of a Rupee per Hundred Dollars; also New and Enlarged Tables of Premium and Discount on Dollars, of Bullion, and of indirect Exchanges between England, India, and China. By HENRY RUTTER, late Agent of the Commercial Bank of India, Hong Kong. New Edition. Price £1 10s., cloth.

### **Rutter's General Interest Tables;**

For Dollars, Francs, Milreis, &c.; adapted to both the English and Indian Currency, at Rates varying from 1 to 12 per cent. On the Decimal System. By HENRY RUTTER. Price 10s. 6d.

### **Maertens' Silk Tables,**

Showing the cost of Silk per pound, avoirdupois and kilo, as purchased in *Japan* and laid down in London and Lyons. Price 30s.

### **Maertens' Silk Tables,**

Showing the cost of Silk per pound, avoirdupois and kilo, as purchased in *Shanghai* and laid down in London and Lyons. Second Edition. Price 30s.

### **Ellis's Rationale of Market Fluctuations.**

A compendium of shrewd observations on the nature and causes of fluctuations in market prices, whether they arise from market influences or more general causes. The writer is evidently acquainted practically with business principles and detail, as well as a theoretical student of these subjects, and the work for this reason is the more valuable.

Third Edition, revised. By ARTHUR ELLIS. Price 7s. 6d.

**Royle's Laws relating to English and Foreign Funds, SHARES, AND SECURITIES.** The Stock Exchange: its Usages, and the Rights of Vendors and Purchasers. With 400 References to Acts of Parliament and decided Cases, and an Analytical Index. By WILLIAM ROYLE, Solicitor.

1 vol. 8vo, pp. 124. Price 6s.

### **Goschen's Theory of the Foreign Exchanges.**

By the Rt. Hon. GEORGE J. GOSCHEN, M.P. Ninth Edition. Price 6s.

### **Schmidt's Foreign Banking Arbitration its Theory and Practice.**

A Handbook of Foreign Exchanges, Bullion, Stocks, and Shares, based upon the New Currencies, &c. By HERMANN SCHMIDT. Price 12s.

[ENTERED AT STATIONERS' HALL.]

A  
HANDY BOOK  
OF  
THE LAW OF  
BILLS, CHEQUES, NOTES,  
AND  
I O U'S;  
CONTAINING NEW STAMP ACT.

BY  
JAMES WALTER SMITH, ESQ., LL.D.,  
*Of the Inner Temple, Barrister-at-Law,*  
AUTHOR OF HANDY BOOKS ON "JOINT-STOCK COMPANIES," "PARTNERSHIP,"  
"BANKING," "MASTER AND SERVANT," "BANKRUPTCY," AND  
"HUSBAND AND WIFE."

---

"He is well paid, that is well satisfied."  
MERCHANT OF VENICE.

---

**FORTY-SIXTH THOUSAND.**



London:  
EFFINGHAM WILSON, ROYAL EXCHANGE.  
1879.

Storage  
KD  
1695  
.29  
564x  
1879





## P R E F A C E .

---

THE object of the following treatise is to supply to the commercial world, and to the general public, what has hitherto been wanting—a cheap and compendious code of the law of inland negotiable instruments. This work, being chiefly meant for the guidance of men in business, does not, by its title, pretend to supply the place of the full and elaborate treatises, which are necessary to the practitioner; to whom, however, as well as to the student, this volume, from its brevity, may, perhaps, be useful.

The Law has been succinctly stated, as well in accordance with Statutes and decisions, as with the principles which guide the Courts; but it has not been considered necessary to refer, by name or quotation, either to the one or to the other.

The law as to cheques is stated in chap. xxi, sec. 11, in accordance with the modifications introduced by the Act of the 2d of August, 1858, which was passed to settle doubts arising from the former statutes and a decision thereon.

The division of every chapter into numbered sections, (each of which is frequently subdivided into several paragraphs,) and the reference at the head of the chapters to the subjects treated of in each section, will, it is hoped, serve so to facilitate perusal as to render an Index unnecessary. Nevertheless an Index has been added.

It is believed that the APPENDIX on Forms and Stamp Duties (though the humblest portion of the work) will be of considerable service.

For those who are entirely unacquainted with negotiable instruments, an explanation of many of the technical terms used with reference to them is given in chap. i, sec. 1.

J. W. S.

6, CROWN OFFICE ROW.



## CONTENTS.

*To facilitate reference, each chapter has a table of its contents prefixed.*

CHAPTER.	PAGE.
I.—INTRODUCTION.—Of Bills and Notes, and the Parties to them . . . . .	5
II.—Of the Power of Parties to Contract, and therein of Agency and Partnership . . . . .	8
III.—Of Consideration . . . . .	16
IV.—Of Transfer . . . . .	25
V.—How far a Bill or Note is considered as Payment	32
VI.—Of Acceptance . . . . .	34
VII.—Of Presentment for Acceptance . . . . .	37
VIII.—Of Presentment for Payment of Bills and Notes	38
IX.—Payment . . . . .	41
X.—Appropriation of Payments . . . . .	44
XI.—Satisfaction, Extinguishment, and Suspension . . . . .	45
XII.—Principal and Surety . . . . .	47
XIII.—Notice of Dishonor . . . . .	51
XIV.—Of the Alteration of Bills and Notes . . . . .	59
XV.—Of Interest . . . . .	61
XVI.—Of Forgery and False Pretences . . . . .	62
XVII.—Of the Statute of Limitations . . . . .	64
XVIII.—Of Set-off . . . . .	69
XIX.—Of the Forms of Bills and Notes . . . . .	71
XX.—Of Actions on Bills and Notes . . . . .	74
XXI.—On Cheques . . . . .	75
XXII.—Of an I O U . . . . .	79
APPENDIX.—Forms . . . . .	80
New Stamp Act . . . . .	83

## CHAPTER I.

### INTRODUCTORY.

---

#### OF BILLS AND NOTES, AND THE PARTIES TO THEM.

1. *Of a Bill of Exchange, and the names and relations of the parties thereto.*
2. *Of a Promissory Note, and the names and relations of the parties thereto.*
3. *How Bills and Notes are made payable, and therein of indorsement.*
4. *The Acceptor primarily, and other parties secondarily, liable.*
5. *The same of the maker of a Note.*

1. A bill of exchange is an unconditional written order addressed by A to B, directing him to pay a sum of money, named therein, to C.

In this case, A (who is called the *drawer* of the bill) is said to draw upon B, who is, therefore, called the *drawee*; and C, the person to whom the money is to be paid, is on that account called the *payee*.

The drawer may be himself the payee, and he may direct B to pay him simply, (as by the words "*pay to me*,") or to pay to him or his order, (as by the words "*pay to me or my order*."") [See Appendix—Forms.]

The drawer having written this order, it should be presented to the drawee to receive his assent. If the drawee assents to it, he (in this country) testifies such assent by writing his name across it (see the forms above referred to), which is called accepting the bill or draft, after which the drawee is called the *acceptor*. If he refuses to accept, he is said to *dishonor* the draft or bill by non-acceptance.

When a person, in order to transfer his interest in a bill, writes his name on the back, he is called an *indorser*, and the person to whom his rights are so transferred is called an *indorsee*. Bills are often indorsed when the interest in them would pass without such indorsement, but in many cases it is necessary to indorse a bill in order to pass an interest therein; as if the bill be pay-

able to the drawer or his order, the drawer must indorse in order to transfer his interest, and if the bill be payable to C or his order, C must indorse.

The drawer and C would in these cases be called *indorsers*, and the persons taking from them *indorsees*.

When no such indorsement is necessary to transfer the interest in the bill, it is said to be payable *to bearer*; and a person transferring without indorsement is simply called the *transferor*, and the person who takes from him the *transferee*.

The *holder* is, in the words of Mr. Justice Byles, "the person in actual or constructive possession of the bill, and entitled at law to recover its contents from the parties to it."

2. A promissory note is a written promise by A to B, to pay to B, or to B or his order, a specified sum on demand, or at a certain time. The person giving the promise is said to be the *maker* of the note, and occupies a position resembling that of the *acceptor* of a bill; and the words *transferor* and *transferee*, *indorser* and *indorsee*, and *holder*, are applicable with reference to notes, the same as to bills of exchange.

An ordinary bank note is a banker's promissory note.

3. Bills of exchange, being intended for the transfer and transmission to third parties of debts due by one man to another, the drawer is supposed to be the creditor of the drawee, who is presumed to have in his hands effects of the drawer which the latter is desirous of transferring.

An ordinary banker's cheque is a bill of exchange payable to bearer on demand.

It is therefore for the drawer to consult his convenience as to how he shall direct the drawee to pay the money (1), at what time, or (2), at what place, and (3), to whom.

For instance, the bill may be payable (1) at sight, six months after date or after sight; (2), in London, or at Drummond's bank; (3), to the drawer or his order.

Instead of directing the drawee to pay to the drawer or his order, the drawer may make the bill payable to a third person (naming him), or to such person or his order, or to bearer.

If the bill is not payable to the payee's order, it is not negotiable, and is of no use except to the payee. If it is payable to the payee's order, the payee, in order to transfer his right to it, must indorse it, and the person to whom

he gives it will take the money on the bill at maturity, by virtue of the order testified by the indorsement.

If the indorsement be by simply writing the indorser's name, as is usual, the bill is then payable to bearer, and passes by delivery; though at each successive delivery an indorsement is often required for the security of the transferee.

The same rules apply where the bill is payable to the drawer or his order.

If the drawee is directed to pay "to bearer," the bill *needs* no indorsement to confer a title to the money, though indorsements are often given as the bill changes hands.

Promissory notes may be made payable in the same way as bills, and with the same results.

4. The acceptor is the person who is to be liable to the drawer on a bill, so long as it remains in the drawer's hands, and is *always* the person *primarily* liable (a term to be presently explained, see chap. xii); and when the drawer, by indorsement (which is in general necessary), transfers the bill to another, the drawer in his turn becomes liable, with the acceptor, to the holder of the bill, and so does every subsequent indorser, the security thus increasing with each indorsement.

The drawer is also liable upon every unaccepted draft of his which he transfers, for by so doing he makes an implied undertaking that upon presentment to the drawee it shall be accepted.

5. The maker of a note occupies a position similar to that of an acceptor of a bill, being the person *primarily liable*, and when the note is transferred by indorsement by the payee, the indorser likewise becomes liable to the holder of the note, as does every subsequent indorser. (As to the nature of *joint* and *joint and several* notes, see chap. xix, sec. 1.)

As all these parties have different rights and liabilities, it will be convenient to treat those of each one separately; but before doing so it is necessary to make some general observations upon the power which different classes of persons have in law to bind themselves or others by becoming parties to bills or notes; for it is most important to every one who deals with these instruments to know the real position of those who may be liable to or with him.

Persons incurring such liability, whether on behalf of themselves or others, are said, in legal language, to

*Contract*; and the power to do this will be the subject of the next chapter.

## CHAPTER II.

### OF THE POWER OF PARTIES TO CONTRACT, AND THEREIN OF AGENCY AND PARTNERSHIP.

1. *Importance of the Subject to those who have dealings with Bills.*
2. *Disqualification of Infants, Married Women, Insane Persons, Idiots, Persons Drunk.*
3. *Agents, how appointed.*
4. *Of authority to an Agent, divided into real (whether express or implied) and presumptive.*
5. *How to ascertain whether a man is authorized to act as Agent.*
6. *Of limited and general Agency.*
7. *Of presumptive Agency, whether limited or general.*
8. *Authority of general Agent presumed to continue.*
9. *How Agent can bind Principal, and how bind himself.*
10. *Rights of Principal and Agent respectively to sue.*
11. *Of Partnership, and the mutual Agency of Partners.*
12. *Of the various kinds of Partners, and how they can bind or be bound by one another.*
13. *Of Dissolution,—how it affects the power of one Partner to bind another.*
14. *Miscellaneous matters connected with the above subjects.*

1. Bills and notes are one kind of *contract*.

It is easy to decide how a bill or note shall be made payable; but it is far more important to be able to know how far the persons who are to be parties to these instruments are by law capable of contracting, so as to bind themselves or others.

Every one who contemplates dealing with a bill or note should carefully consider whether those who are already, or are about to become, parties to the instrument are capable of binding themselves; or, if they sign as agents for others, whether they are capable of binding those others.

2. I will first mention the disqualifications attaching upon the person of a contracting party in his individual capacity. I say 'upon his person,' because there are certain classes of people who are by law wholly or partially incompetent to contract; and I say 'in his indi-

'vidual capacity,' because one who cannot bind himself may yet be an agent to bind another.

An infant, *i. e.* a person under full age, cannot bind himself or herself by a bill or note, unless it be merely for the price of necessaries, and not carrying interest.

Married women cannot bind themselves unless they are carrying on business as sole traders according to the custom of London; or have separate property under "The Married Women's Property Act, 1870;" or have separate property vested in trustees for them, in which latter case the proceedings must be in a court of equity.

Insane persons are under disability to contract only *while* they are insane, unless they have been declared lunatics under a commission of lunacy, in which case the commission must be superseded before any valid contract can be made with them even during a lucid interval.

Idiots are persons who never have sufficient wits to be of a contracting mind, so that although they may go through an exterior form of contracting, as by making a mark, yet no actual contract can be made with them.

Persons who are drunk, or whose mental faculties are by some accident materially impaired, whether for a long or a short time, are, during such states, incapable of contracting.

But, though infants and married women in general cannot bind themselves, yet they may be agents for others so as to bind those others; and a married woman may be an agent as well for strangers as for her husband. So, indeed, might a lunatic bind people who were foolish enough to employ him.

It may here be observed that if an acceptance be taken from an infant for a debt which he owes, he will, though not bound by the acceptance, be entitled to credit, like any other person, for the time the bill has to run, during which he cannot be sued either on the bill or on the original debt.

3. But to ascertain whether a person is capable of personally binding himself is generally far easier than to discover, in cases where he affects to act as agent, whether he is capable of binding those whom he pretends to represent. This, which at first sight would appear simple, will be found to require careful attention.

It is scarcely necessary to say that where one man appoints another his agent, (which may be by word of mouth as well as by writing, and no particular form is



necessary,) the agent becomes able to bind his principal as to all matters within the scope of his authority. We are not speaking now of contracts under seal, *i. e.* by deed, to execute which the agent must be appointed by deed, for this work does not treat of any contracts which come under that class.

4. But it is not merely by virtue of an *actual* authority that one man becomes able to bind another; for A may hold such a position with regard to B, as that without such authority to act as agent, nay, in the face of an express contract *not* to act as agent, A will be presumed by the law to have authority so to act, and will be capable of binding B in contracts made by all persons who are not aware of the actual arrangement between A and B.

In other words, a man who is not actually an agent, may be an agent to the world, though in so acting he be exceeding his authority, or even be guilty of a breach of contract as between himself and his supposed principal.

Authority, therefore, is divided into *real* and *presumptive*; real being where a man has actually or impliedly authorized another to do certain acts; and presumptive being where a man by his conduct holds out another as being authorized to bind him: for whether that other be really authorized or not, the public have under certain circumstances a right to conclude that such authority exists.

In fact, real authority arises from the act of the principal, and presumptive authority from the appearances held out to the world. And both these kinds of authority may be either *limited*, *i. e.* as to time, particular acts, or mode of business, or *general*, *i. e.* extending to all acts connected with the principal's affairs at all times. If the supposed agent acts without, or exceeds his real authority, and has no presumptive authority, he alone is liable.

5. In case of doubt whether a man has real authority or not, the best course, where practicable, is to ask his principal. Where the alleged authority is in writing, and is shewn to you, you must judge for yourself of its sufficiency, and whether the act which the agent proposes to do is within its scope.

There are many cases where you may be quite sure that a man is agent for another for *some* purposes, as in the case of clerks, foremen, attorneys, &c.; but you are not entitled to presume from the situations of those persons that they are capable of binding their employer in bill transac-

tions; you must therefore be satisfied before dealing with them that they have a distinct authority, or a presumptive one, from a ratification of their former dealings.

6. An agent may have a special or limited authority referring to a single bill or note, or he may have a general authority to become a party to all bills or notes: clerks, and foremen at home, and other agents at a distance, are often general agents. A general authority to transact business does not enable the agent to bind his principal by accepting or indorsing bills. And special or limited authorities to accept or indorse are construed strictly.

7. We will now pass on to the cases of presumptive authority; that is, cases where, not knowing whether a man is authorized or not, you may presume that he is so.

Authority may be presumed from custom and acquiescence; as where A had been in the habit of indorsing and accepting for B in his name, and B had recognized A's acts, (as by paying the bills or otherwise,) B cannot defend an action on one of A's acceptances, on the ground that it is a forgery. And it is a question for a jury whether a man has held out another to the world as his agent by thus ratifying and adopting his acts.

Where an agent proposes to indorse bills which are already in his hands, it is quite as important to inquire into his authority, as if he were about to draw or accept a bill; for, unless he be authorized, the only person bound by such indorsement will be the agent himself.

This refers to bills payable to order; if, however, the bills are payable *to bearer*, the agent may be presumed to have authority to transfer. But in whatever way the bills are payable, the transferee, if he knows the agent has no authority to transfer, cannot recover on the bills.

And when *overdue* bills, even though payable to bearer, are improperly transferred by an agent, the transferee cannot recover upon them, though he were ignorant of the absence of authority to transfer. The fact of their being overdue should put the transferee upon his enquiry; —he takes them at his peril.

8. When a *general* agent is once constituted, his authority is presumed to continue till notice is given of its ~~re~~vocation. When a customer has dealt with a principal through an agent, or has become acquainted with the fact of his agency through business transactions, the customer is entitled to presume that the agency continues, until he has individually received notice that it has ceased. To

persons who have not had such dealings with the firm, notice in the *Gazette* is sufficient.

9. An agent cannot appoint another person to act for him, unless specially authorized to do so.

An agent putting his name to a bill or note, does so either by writing his principal's name alone, or with the addition of his own.

If he omit to write his principal's name, his principal is not bound.

If the principal's name be written by a pretended agent, without authority, the principal is not bound.

If the agent write his own name as well as his principal's, he is bound as well as his principal, unless the agent's ministerial character clearly appear by the addition of such words as "per procuration," "sans recours," or "but only as agent for C. D.," &c. Where a bill drawn on a company was accepted by their agent, thus—"Accepted, per H. B.," and where another drawn on a mining company was accepted by the purser, thus—"Accepted, W. C., Purser," the additions to the names were considered to be mere matter of description, and the agent was held to be personally liable.

Neither the general agent, or the purser, of a cost-book mining company can sign bills or notes so as to bind the company, but they themselves will be bound.

10. An agent holding a bill or note may sue and recover upon it the same as the principal; but if the principal cannot recover, no more can the agent.

So a principal, though his name do not appear on the bill or note, may take the benefit of it, if it be held for him by his agent; but is subject to any defence that might be set up against his agent. Thus, where a principal delivered a bill to his agent to be discounted, and the agent treated it as his own, and the transferee who discounted it only paid the agent a part of the money, the principal was held entitled to recover the remainder of the money from the discounter. But in that case, if the defendant, the discounter, had had a set-off against the agent, it could have been successfully pleaded against the principal.

11. The most important kind of agency, and that concerning which the greatest number of disputes arise, is the agency which one partner exercises for another.

A partnership, it is important to observe, takes place whenever two or more persons participate, or are entitled to participate, in the profits of an undertaking.

In every mercantile undertaking each partner is an agent capable of binding his co-partners in partnership transactions, by becoming a party to bills or notes in the name of the firm.

I have said "in a mercantile undertaking," for where the partnership is for other purposes, as for instance in case of farming, medical, and law partnerships, one partner cannot bind his co-partners by bills or notes.

A partner in a cost-book mine cannot bind his co-partners by bills.

I have said "in the name of the firm," for the ordinary name of the firm must be signed on the instrument without any substantial variation.

If a bill be accepted, or a note made by a partner in his own name, the firm will not be liable to the holder, although the proceeds were applied to partnership purposes.

12. Whatever agreement may have been made among the partners, persons not aware of its nature may always presume that each partner has authority to bind the others by bills or notes. It will always be safe, therefore, for persons so circumstanced to take a bill or note on which the name of the firm is written by one of the partners.

There are four kinds of partners, (1) ordinary, (2) dormant or secret, (3) retired, and (4) ostensible or nominal.

The presumption of authority to bind the two last-mentioned classes only arises under certain circumstances.

Ordinary partners are those who participate, or are entitled to participate, in the profits of the firm, and are recognized in that capacity.

Dormant partners are those who take a part of the profits without being ostensibly members of the firm.

Retired partners are those who have ceased to take or be entitled to the profits of the firm, directly or indirectly.

Ostensible partners are those who, by word or act, have held themselves out as partners, whether they are so or not.

Dormant partners will be bound, though the person dealing with the firm is not aware of the existence of such partners at the time of the contract.

Retired partners will be bound, unless the person dealing with the firm has notice of their retirement. This notice should be given to customers individually, and it is usual to apprise the public by means of a notice in the *London Gazette*. This notice, however, is by no means necessary, for there are many other circumstances, such as a change of names over the door, or on the invoices, or, in case of

bankers, on the cheques, &c., from which it will be presumed that those acquainted with the place of business, or who had seen the invoices, or in case of bankers the altered cheques, knew of the change in the firm.

Ostensible partners, (that is, those who are *merely* ostensible partners,) are only liable *to those* to whom they have been held out as partners.

We will endeavour to illustrate the different rights which a contracting party may have against a dormant and an ostensible partner.

If at the time you deal with the firm of "A and B," you know that C is a dormant partner, and that D is an ostensible partner in the firm, they are of course both liable to you. But if, after you have taken an acceptance of "A and B," you *discover* that C is a dormant partner, and that D has been acting as a partner, you may treat C as liable to you on the acceptance, for he has been receiving, directly or indirectly, a portion of the profits of the firm, which is the fund to which creditors look for payment. But you cannot make D liable, who was, in the case supposed, *merely* an *ostensible* partner, for the only ground on which he could be liable to you was that you contracted with him and on his credit, and that you did not do, for you did not know him as a partner.

To put it shortly : the man who is really a partner is liable, though he was not known to be a partner; and the man who holds himself out as a partner is liable to those who thought him one, whether he was one or not.

Thus there are two classes of persons who are liable on a bill or note signed in the name of the firm.

(1.) Those who participate, or are entitled to participate, in the profits of the concern.

(2.) Those on the strength of whose credit a person *may* have contracted.

As regards the firm, a partner may have no *right* to pledge the credit of his co-partners, but he has the *power* to do so; and it is unnecessary here to consider the consequences of a breach of the agreement which the partners have made with one another.

A retired partner is, as regards those who knew of his retirement, only liable upon bills and notes signed while he remained a partner.

A joining partner is only liable upon bills and notes signed *after* he has joined the firm.

13. We have hitherto considered the doctrine of agency

as regards partners in a still subsisting firm ; we will now treat shortly of the power which, after a dissolution, a partner may have of binding his late co-partners.

There is no charm in the word "dissolution ;" for as a partnership may be originally created by a common consent of two or more persons, with or without a deed or written agreement ; so, if there has been a deed or written agreement between the partners, and such instrument has been cancelled, and even a deed of dissolution executed, yet the partnership may still subsist by a common consent, or, what comes to the same thing, a new partnership may by such consent be straightway created. And after a dissolution, one partner may be so intrusted by his late partners with the management of affairs, that, even with those who know of the dissolution, he may be able to bind the late firm by contracts made in their name. But, independently of any consent on the part of his late partners, each member of the dissolved firm can, as will be seen, under certain circumstances, bind his late co-partners.

After a partnership is dissolved, a dissolving partner has no longer any right to pledge the credit of the firm. To avoid doing so is his duty to his late co-partners. His *power* as regards the public is as follows :—

As regards those who know of the dissolution, a partner is no longer able to bind his former partners ; but to those who do not know of it, each partner occupies the same position as a nominal or ostensible partner did before the dissolution, *i. e.* each will be liable to those who may contract upon his credit.

For this reason it is usual upon a dissolution to give express notice of the fact to those who have been customers or correspondents of the firm, and to give notice to the world by advertisements in the *Gazette* and other papers, which will be always sufficient as to those who have not been customers, and will be *prima facie* evidence that even customers knew of the dissolution.

If a bill be accepted by an ex-partner in the name of the dissolved firm in favour of a person who has no notice of the dissolution, such person has not only himself a right to sue, but his transferee, though taking the bill *with* notice, will have a like right.

14. Notice to one partner is considered by the law to be notice to all ; so that a bill improperly accepted by

an ex-partner in the name of the dissolved firm in favor of another firm, of whom *one* knew of the dissolution, could not be sued upon by the latter firm.

A dormant or secret partner, whose liability arises solely from his right to participate in the profits (see sec. 12), cannot after a dissolution be bound by the acts of an ex-partner; for, with the dissolution, the cause of the liability has wholly ceased.

The estate of a deceased partner is never liable upon contracts made by the surviving partners after his death.

In taking from an ex-partner a bill belonging to a late firm, it will be well to have the separate name of each partner, or else to see that the partner putting the name of the firm to the bill has actual authority to do so.

A shopman, a foreman, a clerk, or a wife, has not, as such, authority to pledge a man's credit by putting his name to a bill; but there is often not only an express authority to such persons, but a presumed one arising from ratification or payment of bills already drawn, indorsed, or accepted by such persons, as the case may be.

An authority to indorse does not include an authority to draw, and *vice versa*; and neither amount to an authority to accept.

Notes are on the same footing as bills with regard to authority, actual and presumed.

## CHAPTER III.

### OF CONSIDERATION.

1. *What it is.—Presumed in Bills and Notes.—Rule as to necessity of it.*
2. *Accommodation Bills; how far no Consideration a Defence.*
3. *Fraud & Illegality of Consideration; how far a Defence.*
4. *What constitutes Consideration, Fraud, and Illegality.*
5. *Of a subsequent fatal failure of Consideration.*
6. *Fraud; what, and how far a Defence.*
7. *Illegal Consideration; what and how far a Defence.*  
*Bills and Notes for future cohabitation, for procuring marriages or separations, in restraint of trade; gaming, wagering, and stockjobbing, &c.*
8. *Table illustrating the different defences treated of.*

1. A consideration is some benefit given, or promise

made, or loss suffered by the plaintiff to or for the defendant.

It is necessary for a plaintiff suing on contracts or promises, whether made by word of mouth or in writing, (unless by deed, *i. e.* under seal,) to prove a consideration to have been given for them.

Bills and notes are exceptions to this rule; for where a bill or note is given, a consideration will be presumed to have passed, till the contrary is made probable; and to do this rests with the person sued on the bill.

For instance, if A has drawn upon B, and he has accepted the bill, and A then sue him upon it, it is B's business to shew by his witnesses, or by cross-examination of A, and those called by him, that the acceptance was given not for value, but for the accommodation of A, and to enable him to obtain money from other parties.

Although consideration is presumed to have been given for a bill or note, yet, under certain circumstances, to be presently explained, a defence may be made out by shewing either,

1. The absence of consideration.
2. That the bill or note was obtained by *fraud*.
3. That it was given in pursuance of an illegal contract, *i. e.* on an illegal consideration.

The rule regarding the necessity of consideration is this: Where a person gives a bill gratuitously to another, either by way of accepting it for his accommodation, or indorsing to him another bill, if the accommodating party is afterwards sued on the acceptance or indorsement, it will be a sufficient answer to the action that the plaintiff gave no consideration for the bill or note.

2. Accommodation bills and notes being, however, meant for the person accommodated to obtain money upon, the latter can by indorsing them to another party for value, entitle him to recover both against the party accommodating and the party accommodated.

For instance, suppose a bill accepted gratuitously (which we will call an "accommodation bill,") were indorsed by the drawer in whose favor it was accepted, to a third party *for value*, such party can recover upon the bill as well against the gratuitous acceptor as against the drawer who indorsed it. And, to go one step further, suppose the indorsee for value, instead of being the plaintiff, were to transfer the bill gratuitously, his transferee would be able to stand in his place, and the transferee might suc-



cessfully sue all the parties to the bill, except his gratuitous transferor.

From this it will be seen that any person may sue upon a bill or note, who has either himself given value for it, no matter to whom, or deduces his title from some one who has; and any person may be sued on a bill either if he has received value for it, no matter from whom, or if the plaintiff has given value, or deduces title from one who has.

Therefore where a person, who has gratuitously drawn, accepted, or indorsed a bill, or made or indorsed a note, is sued upon it, it is necessary for him to allege in his plea, and to prove, *not only* that it was an accommodation bill, *but* that the plaintiff and those through whom he deduces his title gave no value for it.

If the accommodation acceptor, maker, or indorser, has to pay the bill or note, he may recover against the party whom he accommodated the amount paid and interest, but not the cost of defending an action on the instrument.

3. We have next to consider how far a fraud practised on the defendant is an answer to an action on the bill or note.

If the defendant has been defrauded of the bill or note, or it was given for an illegal consideration, he must state this in his plea, and also that the plaintiff gave no consideration for the bill; but there is an important difference between this case and the one above mentioned, namely, that when the defendant has proved the fraud or illegality, the plaintiff is then put upon proof of having, in ignorance of fraud or illegality, given value for the instrument. For there is a presumption that value was given for an accommodation bill, which was intended to raise money, but no such presumption with regard to bills tainted with fraud or illegality; and, besides, it would be manifestly unjust to place the defendant in an action on such bills under the necessity of proving that no consideration passed between the alleged defrauder and the plaintiff in the action; whereas nothing can be more fair than to leave the fact of consideration having passed to be proved by the plaintiff, who should know all about it.

Where a plaintiff is suing upon a bill which he himself has obtained from the defendant by fraud or on an illegal contract, the defendant upon proof of these facts, *and*, in case of fraud, of his having repudiated the contract upon discovery of the fraud, will have made out a valid defence. But where the plaintiff has not *himself* been guilty of the

fraud or a party to the illegality, the proof of these facts on the part of the defendant will only constitute a defence subject to the conditions above stated, namely, if the plaintiff took the bill with notice of the fraud or illegality, or gave no consideration.

4. We will now proceed to consider what constitutes consideration, fraud, and illegality, respectively.

The payment of money amounts to a consideration, and, no matter how small the sum is, so that there is an absence of fraud, it will be sufficient to entitle the holder to recover against prior parties.

Any risk run at the request of the person who gives the bill or note, may be a consideration for it. If A has given B his acceptance, this may be a consideration for B's acceptance given to A. Cross acceptances may thus be considerations for each other.

A pre-existing debt due from the transferor to the transferee of a bill or note may be a consideration; at all events, if the bill be payable at a future day; for the previous debt cannot be sued for till the maturity of the bill or note, and this suspension of the right to sue amounts to a consideration, from the person taking the bill or note.

A fluctuating balance may be a consideration when it is in favor of the party to whom a bill or note is given, the consideration increasing or decreasing from time to time with the amount of the balance.

A debt due to another may be a consideration; thus, if A owe money to B, and C give B a bill or note for the amount, this will be a good consideration, and, of course, it will be equally so if C be jointly liable with A for the debt. Also if the bill C gave to B were for a debt which C owed to A, the consideration would be good.

Where a bill is given for the debt of a third party, it is no defence to an action on the bill that such debt was without consideration.

A judgment debt may be a consideration for a note payable at a future day; for the person taking it thereby impliedly undertakes to suspend proceedings on the judgment till the maturity of the instrument.

Where a bankrupt gives a note to a creditor for a former debt, such debt is not a sufficient consideration to support the note; nor is it so in the case of an insolvent discharged under the act, such securities given by him being illegal.

5. Where a consideration *entirely* fails after the bill or note is given, such failure has the same effect as if there had never been any consideration in contemplation at all. For instance, if you give a man a promissory note in consideration of his promising to be your executor, and he dies first, so that he cannot discharge that office, his representative cannot recover against you on the bill. If, however, this bill has been indorsed to a third party for value without notice, he could, of course, recover, on the principles above stated. (See sec. 2.)

But to produce this effect there must be a total failure of that which was contemplated as being the consideration for the bill or note; and a separate and independent wrong, although it virtually renders worthless that which was the consideration for the instrument, will not prevent the person to whom the instrument was given from recovering upon it. For instance, if a bill be given for the price of goods sold and delivered, and the goods are never delivered, there is a defence to an action on the bill; but if, having delivered the goods, the vendor forcibly take them away again, he may recover upon the bill, and the forcible removal will be merely ground for cross-action. In the same way the worthlessness of the goods delivered, or the work done, could not be set up in answer to such a bill, unless it were so great as with other circumstances to amount to *fraud*. But, as in the case mentioned in the last paragraph, the bill is good in the hands of a holder for value without notice.

6. Where the defendant insists on fraud as a defence, he must, on the discovery of the fraud, have entirely repudiated the contract, and retained no benefit under it.

Fraud is where a man is induced to do any act by means of an intentional material misrepresentation, though the party so deceiving him aim at no profit by the transaction. And where a man, in order to influence the conduct of another in business, makes a random assertion (not being a warranty), without knowing whether it be true or false, this is a fraud.

I say "*material*" misrepresentation, for it is not every assertion that a man may make (as for instance, in vending his goods) which, though intentionally false, will constitute fraud, or will amount to a warranty. Also, the false statement or the conduct (for fraud may be by act as well as words, or by both together) must be such as would be naturally calculated to lead a reasonable man astray.

I say "without being a warranty," for a random warranty of a fact which the warrantor did not know to exist, does not amount to fraud; though it does amount to fraud if he knew the warranty to be false.

The means and phases of fraud are so manifold that to attempt much more than a general definition of it would in these pages be impossible. Two instances may nevertheless be mentioned, which, though manifest acts of dishonesty, might not strike an unprofessional person as amounting to legal fraud.

Where a debtor is compounding with his creditors, and without their knowledge gives a bill or note to any creditor, either voluntarily or as an inducement to him to execute the deed of composition, this bill or note is void in the hands of the creditor, as being a *fraud* upon the body of the creditors. So also, if the deed contain a stipulation for the surrender of securities, no creditor holding a bill of the insolvent's will be allowed to keep the proceeds in fraud of the creditors, but must refund the money.

Another instance shall be mentioned from the law of suretyship. When one man proposes to give a bill or note in payment of a certain debt owed by another, and the creditor and the debtor have a secret understanding that the money is to be otherwise appropriated, (as by payment of a prior debt, or by placing part in the hands of the debtor himself,) such a bill will be a fraud on the surety, and void in the hands of the creditor.

7. A plaintiff cannot recover upon a bill given for illegal consideration, if he is obliged to rely on the illegal transaction in making out his case.

Considerations which are illegal, are so either (1) at common law, *i. e.* by the general unwritten law of the land, or (2) by statute.

Considerations illegal at common law may be again divided into (1) such as are privately immoral, and (2) such as contravene public policy.

Under the former head come the considerations for bills, notes, or cheques given for *future* cohabitation, for the rent of apartments knowingly let for the purpose of prostitution, &c.

Under the latter are included the considerations for bills, &c., given upon a contract for the general restraint of trade or business; as if, upon a purchase of the goodwill of a medical practice, or a shoe-maker's shop, it were

bargained that the persons parting with the businesses should thenceforth altogether cease from curing wounds or making shoes respectively. Though there would be no objection to a partial restraint, as to do business only within fifty miles of London, or only with certain classes of customers, as wholesale or retail, &c.

So contracts in restraint of marriage (and it should seem though only in partial restraint) are likewise void; and so are contracts to procure a marriage, or to procure the separation of those already married; also contracts to injure the revenue, to compound a felony or a *public* misdemeanor, or to induce a person to infringe the law.

Contracts with a public enemy, as bills or notes in their favor, are also illegal, and all bills and notes are worthless in their hands; so also contracts for obtaining public offices, and all bills, &c., given in pursuance of such contracts are illegal at common law. These are also many of them illegal by statute, which is the other main division of illegality.

In treating of considerations illegal by statute, it may be convenient first to mention that the offence of usury has ceased to exist, and no contract can any longer be objectionable on that ground, and that gaming contracts, whether written or verbal, are not in general illegal, but are *merely void*; *i. e.* a man may make a wager or a bet if he pleases upon a lawful game, but having made it, he need not pay. Bills, notes, and cheques, therefore, given in pursuance of such bets or wagers, can only be recovered upon by an innocent indorsee or holder who has taken the bill for value, and in ignorance of the transaction out of which it originated.

Though the winner of stakes at a horse-race may, in general, recover them in an action, yet a former statute which rendered void all bills or notes given for such stakes having been preserved in force by the recent statute on the subject (8 & 9 Vict., c. 109, s. 15), it is the opinion of a learned writer that a *promissory note* given for the amount would be void, except in the hands of an innocent holder for value.

If the loser by play or betting, having given a bill or note, has to pay the innocent holder, the former can recover the amount against the man to whom he lost the bet.

But if one man employs another to bet for him, the employer thereby authorizes his agent to pay losses; the

agent having done so, can recover the money from his principal. Therefore a bill drawn by the agent upon and accepted by the principal for the amount must be paid by him. In this case it will be observed the sum sued for is not money won at play, but a sum paid by the agent to a third party at the principal's express or implied request.

Bills and notes given, whether by a bankrupt or other person, to persuade a creditor to forbear opposing the order of discharge, or to forbear to petition for the rehearing of, or to appeal against the same, are void, except in the hands of a *bond fide* holder for value without notice of the consideration for which they were given. The Bankruptcy Act, 1861, sec. 166.

Stock-jobbing contracts were not merely void, like those founded on gaming or wagering but were actually forbidden by law; and therefore differences owing by one man to another, or money lent to pay such differences, did not form a good consideration for a bill or note so as to enable a holder cognizant of the transaction to sue upon them. This illegality, however, having been abolished by the Act 23, Vic. c. 28, we need not now consider this question.

No debt can be recovered for selling spirituous liquors in quantities of a less value than 20s., unless delivered at the residence of the purchaser thereof in quantities not less at any one time than a reputed quart; and if any part of the consideration for a bill or note necessarily consists of the price of liquors sold in contravention of this law, the whole note will be void, unless in the hands of an innocent holder for value.

Bills and notes and cheques given to secure the payment of money taken at the doors of an unlicensed theatre, or given by a trader who is a beneficed clergyman, are similarly void in the hands of the parties to the improper transaction.

Where only part of the consideration is fraudulent, the bill or note is bad.

Where an original bill or note is without consideration, or given on an illegal consideration, a renewed bill or note will be open to the same objections, except the amount be reduced by excluding so much of the consideration of the original bill as was illegal.

But if the person who has put his name to the bill or

note for a gaming debt actually pays the whole, or any part of the sum secured to an innocent holder for value, the former may recover back the money so paid from the person who originally took the security for the illegal consideration.

In the cases above mentioned, where the security has been declared by statute to be *void*, it has been provided by the legislature (5 and 6 W. IV, c. 41) that that expression shall be construed as if the Act had said "shall be considered as given for illegal consideration." The effect of this language, as we have seen, is that an innocent holder for value may maintain an action against any party to the bill. But there are other securities rendered *void* by statute, as to which this liberal interpretation does not apply. For instance, the holder of bills and notes given for the sale of an office to a sheriff for ease and favour, could not sue the party who had given the security on such illegal consideration.

The law laid down in this chapter will be partially illustrated by the following table, showing what will constitute a defence, on the grounds treated of, on the part of the acceptor against the drawer and indorsee respectively; but the reader will always remember that when once fraud or illegality are proved by the defendant, the burthen of proving consideration and *bona fides* is shifted on to the shoulders of the plaintiff.

8.	{ No consideration ( <i>i. e.</i> accommodation bill).
Acceptor sued by Drawer may plead	{ Fraud.
	{ Illegality of consideration.
	{ Independent agreement.
Acceptor sued by Indorsee may plead	{ Accommodation bill, and no consideration from plaintiff, or any of those through whom he has taken the bill.
	{ Illegality, with notice.
	{ Illegality, and no consideration (as above).
	{ Fraud, with notice.
	{ Fraud, and no consideration (as above).
	{ Independent agreement, with notice.

## CHAPTER IV.

## OF TRANSFER.

1. *Of Bills and Notes payable to order and to bearer.*
2. *Of Indorsements, blank and special; their modes and requisites.*
3. *Liabilities of Indorser.*
4. *How a Bill may be Indorsed without incurring Liability.—What an Indorsement Warrants.—Striking out Indorsement.*
5. *Whom the Indorsee may sue, and under what circumstances.*
6. *Right to compel Indorsement where improperly refused.*
7. *Indorser becoming afterwards Indorsee.*
8. *Of Trusts, and restrictive Indorsements.*
9. *Liability of person transferring by delivery without Indorsement.*
10. *What warranty is implied in transferring by delivery.*
11. *Bills and Notes payable to Bearer circulate as Money.*
12. *Indorsement on Blank Stamp.*
13. *Rights of Indorsee of unaccepted Bill.*
14. *Rights of Indorsee of overdue Bill.*
15. *Note payable on demand, when considered overdue.*
16. *Payment and other circumstances by which a Bill or Note ceases to be negotiable.*
17. *Bills and Notes under £5.*

1. Transferring a bill or note, means so passing it to another holder as to enable him to recover at maturity against the parties to it.

A bill or note is only transferable when it contains a direction to pay, (1) to the payee's order, or (2) to bearer. If it contain no such direction, it is of no use to any but the original payee.

The payee may be either the drawer or a third person; and therefore a bill when payable to order may either contain the words "pay to me or my order," or "pay to C or his order." (See chap. i, sec. 1.)

In case of a note, the payee is usually a person other than the maker; and then, if the note be payable to order, the promise will be to "pay to C or his order." But a man *may* make a note payable to himself or order.

If a bill or note be payable to order, it is transferable by indorsement; if to bearer, by delivery; if it be not



payable either to order or to bearer, it is only good in the hands of the payee, and is not negotiable.

Bills may be indorsed or transferred by delivery before as well as after acceptance.

Indorsements are either blank or special.

2. A blank indorsement is made by the payee simply writing his name on the back of the bill or note, and this makes it thenceforth transferable by delivery, though in practice the transferor is often asked to indorse each time that the instrument changes hands.

A special indorsement is by writing a direction to pay to a particular person, and may be made by A. B. thus: "Pay C. D. or his order, A. B." The words "or his order," may be omitted in this case, for their omission will not restrict the negotiability of the instrument.

These indorsements, though not bad if written on the face, are most properly written on the back; and, if more space is wanted, a piece of blank paper, for which no stamp is required, should be pasted on to the end of the bill.

Indorsements may be made by mark.

If two persons, not partners, are payees of a bill or note, both must indorse, unless, of course, one has authority to write the other's name.

An indorsement, like an acceptance, is never complete without delivery. Giving or sending a bill to the transferee, or sending it to his place of business, will, of course, constitute delivery; but there are so many circumstances which constitute *constructive* delivery that the general rule is all that can be given.

3. Every indorser of a bill is in the position of a new drawer, and is liable to every succeeding holder, in case the drawee does not accept, or having accepted, does not pay at maturity, on proper presentment, as to which see chap. viii. An indorser of a note is a surety for the maker, and liable if he does not pay.

As a consequence of the above rule, a person who indorses a bill which is not negotiable, and therefore does not give the indorsee a right to sue the drawer or acceptor, will himself be liable to his indorsee on the bill, because he, the indorser, is a new drawer.

This, however, is not the case as regards notes, to which the principle would not conveniently apply.

4. An agent, or any other person, who indorses and

does not want to become personally liable, should add to his name the words "*sans recours*," or "without recourse to me."

An agreement, written or verbal, not to hold the indorser liable, will prevent his indorsee suing him. But a subsequent indorsee without notice of the agreement may of course do so.

Another way in which the holder of a bill or note indorsed to him *in blank* may transfer it without incurring personal liability, is by writing over the indorser's signature the words, "Pay A. B. or order." This in no way affects the liability of the blank indorser, but simply converts his blank indorsement into a special one in favor of A. B.; and this is done without the transferor's name appearing on the bill.

When a man indorses a bill or note, he warrants that the bill has properly come to his hands, and that all the signatures on it are what they purport to be, and these things he cannot deny when sued on the bill.

A holder may, in suing a drawer, acceptor, maker, or early indorser, omit to prove the intermediate indorsements, which may be struck out, and the case may be treated as though the bill was indorsed to the plaintiff in the first instance. This may be done at the trial.

An indorsement intentionally struck out by the holder discharges the indorser.

5. In default of acceptance, or, after acceptance, in default of payment, an innocent indorsee for value may sue all the parties to the bill, and none of them can set up the defence of fraud, duress, absence of consideration, or, in general, illegality.

The only cases where an innocent indorsee for value has not a good title against all prior parties to the bill (unless there is an agreement to discharge any of them, see above, sec. 4, and chap. xi, sec. 2), are those where the security is rendered *absolutely void* by statute. For example, the sale of an office; the stipulation with a sheriff for ease and favor; securities given to enable a creditor of a bankrupt who has proved his debt to receive more than others; or for a debt, for which the debtor is discharged under the Insolvent Debtors' Acts.

The effect of the law in these cases is, that the party who gives the bill or note for any of these considerations, whether as acceptor, maker, drawer, or indorser, cannot

be successfully sued thereon, but the other parties may be so sued.

It has been already stated, that the gratuitous transferee of an accommodation bill may sue any party but his gratuitous transferor, provided *any one* of the prior parties has given value.

6. If a bill which either requires indorsing, or was intended by the parties to be indorsed, be delivered without indorsement, the transferee has a right of action against the transferor for not indorsing, and perhaps now a mandamus will lie to compel indorsement; at all events, a bill in Chancery may, where it is worth while, be filed for this purpose, and the costs would have to be paid by the person refusing to indorse. The personal representatives of the deceased transferor may also be compelled to indorse.

7. If a man, having indorsed a bill, gets it indorsed again to him, he cannot, as a general rule, sue the intermediate indorsers.

8. If a man to whom a bill or note is indorsed for a particular purpose improperly indorse it to another, the indorsee, if he knew of the breach of trust, cannot sue the real owner of the bill upon it; but, on the contrary, the real owner of the bill may bring his action to have it given up.

This kind of trust may be expressed on the bill itself by the form of indorsement, as "the within must be credited to A. B.;" "Pay A. B. or order for my use;" "Pay A. B. for the account of C. D.;" or "For my use;" or "Pay A. B. only." But we have seen—(sec. 2)—that if the indorsement had been merely "Pay A. B.," this would have been equivalent to "Pay A. B. or order."

The restrictive indorsements above mentioned amount to notice to all who may see the bill, that A. B. is merely a trustee of it, and therefore cannot assign to any one the right to receive on his own account the proceeds of it: so that any one to whom A. B. indorses the bill will be liable to deliver it up, or the money received upon it, to the real owner. Also, if the person who takes the bill from the trustee indorse it again to another indorsee who receives the money on it, and pays it to the former, the latter indorsee will be responsible for any mis-appropriation of the money by such intermediate indorsee; for it is the duty of every holder, having notice of the trust, to pay the proceeds either to the trustee or the real owner.

I have spoken of the trustee's indorsee *receiving* the money, because, though he cannot sue, yet parties liable may pay him, and such payment will discharge them.

9. When a bill or note is originally made, or has become (sec. 2) payable to bearer, and is transferred without indorsement, the transferor is, *as a general rule* not liable.

If the transferor merely made a *gift* of the bill or note, he is, of course, not liable, for even if he had indorsed, he could not be sued by the transferee. (See chap. iii, sec. 1, last paragraph.)

If a man pays a bill or note on the purchase of goods without indorsing it, he will not then be liable on the bill (unless he has agreed or promised so to be); for the man who sells the goods, having taken the bill or note without indorsement, must be presumed to have consented to look to the other parties. In fact, the bill has been exchanged for the goods.

So, if such bill or note were given in exchange for other bills or notes, or for money by way of discount, this is a *sale* of the bill, and the transferor is not liable. By not indorsing it, the transferor refuses to pledge himself to the solvency of the parties.

But if such a bill be paid for a pre-existing debt, as for goods bought ten minutes before, the transferor will, in the absence of any understanding on the subject, be liable; for the creditor is entitled to cash, and it is not to be inferred that he meant to let the debtor off by merely taking notes or bills.

And there are other circumstances from which a jury may infer that the implied contract was that the transferor should be responsible, without indorsement, if the bill or note were dishonored; as, for instance, if cash were given for the instrument by a friend as a favor, and not by way of sale or discount.

10. A person transferring by delivery always impliedly warrants that the bill is not forged or fictitious, and if there be a single fictitious signature there will be a breach of warranty, and any cash given for the bill must be returned; or if any other consideration be given, an action may be brought for the breach of warranty.

A person who has received a bill by delivery does not, on so transferring again, make any implied warranty that the signatures are genuine; nevertheless, if he *knows* that they are not so, he will be answerable for the fraud.

11. Bills or notes payable to bearer circulate as money. The *bona fide* possessor of them is their true owner. Therefore, a cheque, bill, or note, payable to bearer passes to any person honestly taking it for value, though the person transferring had no right to transfer.

I say *honestly* taking it; for mere negligence, however gross, will not of itself invalidate his title. Gross negligence, however, in a man at all acquainted with business, may be sufficient evidence of dishonesty and bad faith.

And these rules apply to the pledging of bills and notes, as well as to their absolute transfer; the honest pawnee obtains a property in the bills or notes, and cannot be compelled, as in the case of goods improperly pledged, to return the bill to their rightful owner.

Exchequer bills, before the blank is filled up, and India bonds, have also, like bills and notes payable to bearer, the qualities of money.

12. An indorsement (which, as we have seen (sec. 1), may be made before acceptance) may also be made on a blank piece of paper, on which no note or bill has been made or drawn; and the effect of this is to make the drawer liable upon any bill or note afterwards drawn or made on the same paper to the extent of the stamp. The indorser cannot, when sued, set up as a defence that the note or bill was not made or drawn at the time when he signed his name at the back.

13. When a transferee takes by indorsement an unaccepted bill, with notice that the acceptance has been *refused*, he takes it solely on the credit of the indorser, so that, if the indorser cannot sue the drawer, neither can the indorsee. As, for instance, if the drawer, owing money to A, were to draw upon a third party a bill payable "to A or order," and were afterwards to pay the money to A, and caution the drawee not to accept, and A were then, instead of returning the draft, to present it to the drawee for acceptance, and upon his refusal were to indorse the draft to B with notice of such refusal, and suppose then B were to sue the drawer upon his dishonored draft, the drawer might successfully defend the action on the ground that A, who indorsed the draft, could not have recovered on it, and that the plaintiff took it with notice of non-acceptance.

But, if the transferee have no such notice, he may sue the other parties to the bill, although his transferor could not.

14. The same principle is applied in the case of a bill being transferred overdue ; for such a bill is said to "come disgraced to the indorsee," who takes it at his peril, and "subject to all the equities with which it may be encumbered."

For instance, suppose a bill, drawn on a person for a gaming debt and accepted, were indorsed by the drawer, when *overdue* to an innocent indorsee for value, the latter could not recover against the acceptor ; for the indorsee took the bill under circumstances of suspicion, and solely on the credit of his indorser.

But, if the same bill had been indorsed in the same way before it was due, the indorsee could have recovered against the acceptor, as well as against the person from whom he took the bill.

The above is a case where the person who indorsed the bill overdue could not himself recover upon it, but if the indorser be able to sue upon the bill, so can his indorsee. As if for instance, in the above case, the drawer had indorsed the bill to an innocent indorsee for value *before* it was due, and then the indorsee had indorsed to another *after* due, the latter could recover.

But an indorsee of a bill or note overdue takes subject only to the equities attaching upon the instrument itself, and he is not affected by those which are only collateral to it, as, for instance, a set-off due from the payee to the maker of a note.

15. A note payable on demand is not to be considered overdue unless there be some evidence of payment having been refused, for such notes are often intended to be a continuing security, and interest is often paid on them for many years.

16. When once paid at maturity by the *acceptor* or *maker*, bills and notes are extinguished, and cannot again be negotiated ; but if paid *before* maturity, they will still be good in the hands of a *bona fide* indorsee for value, who has taken them without notice of their having been paid. They should therefore, on payment by the acceptor or maker, be given up to them.

An accommodation bill paid by the drawer at maturity cannot be re-issued by him.

But, with this exception, until a bill is paid by the acceptor, and a note by the maker, they remain negotiable. Therefore, the drawer or indorser who has taken up a dis-

honored bill at maturity, can, instead of himself suing the acceptor, indorse the bill to another person, who will have that right.

When the acceptor or maker has made a partial payment at maturity, the balance only can be recovered by the holder.

The holder of a note, on which part of the consideration *has been paid*, can only indorse for the *whole* of the balance.

When a bill is transferred for part only of the sum due upon it, if this fact appears on the bill itself, the indorsee must sue in the name of the person who transferred to him; but if the indorsement do not mention the fact, and there be no memorandum of it on the bill, the indorsee can sue and recover in his own name the whole amount of the bill, and will be a trustee of the surplus for his transferor.

After taking a release for the bill, or after bringing an action on the bill, the holder cannot indorse so as to confer a title on any one who knows of the release or the action, as the case may be.

17. If the bill or note be under £5, it must only have twenty-one days to run. No indorsement must be made after the bill or note is due; each indorsement must be dated; and the date must be at or not before the time of making, must specify the name and place of abode of the indorsee, and be attested by one subscribing witness at least.

---

## CHAPTER V.

### HOW FAR A BILL OR NOTE IS CONSIDERED AS PAYMENT.

1. *Rights of Creditor who has taken a Bill or Note for a Debt.*
2. *Rights of Parties taking Instruments payable to Bearer without Indorsement.—Sale of Bill or Note.*
3. *Creditor of a Firm taking separate Bill or Note of one Partner.*
4. *Loss of Bill received for a Debt.*
5. *Lien ceases on taking a Bill.*
6. *Miscellaneous matters connected with payment.*

1. It has already been stated that if a creditor take a

bill or note payable at a future day from his debtor, or from a third party for the debtor, the debt is not paid, but no action can be brought for it till the bill or note is mature and dishonored.

If the bill or note is paid, or if it is lost or discharged by the negligence of the creditor, the debt is satisfied; but see sec. 4. If it is in the hands of the creditor overdue and dishonored, he has his remedy, either on the bill or the original debt; and though he may have parted with the bill, the creditor will, in case it be dishonored, still have his remedy for the original debt.

I have spoken of the debt being *discharged* by the negligence of the creditor who has taken the bill; this refers to the case where the debtor, giving the bill for the debt, is drawer or indorser, and must have punctual notice of dishonor (see chapter xiii). If the debtor were *acceptor* or *maker* of a bill or note, he cannot be discharged by the creditor's negligence.

The law will be the same if the debtor request the creditor to take a bill or note of a third person, and the bill or note is dishonored; the creditor may sue his original debtor. The same where, not having the option of taking cash, he takes a bill of the debtor's agent.

2. We have seen (chap. iv, sec. 9) that where a bill or note made or become payable to bearer, is given, though without indorsement, for a pre-existing debt or past consideration to a creditor who is entitled to money, the creditor may still sue his debtor if the bill is dishonored. But if the payment of such a bill be made, not for a past debt, but for an immediate consideration, such as the sale of goods then and there, the seller is supposed to consent to take the bill in exchange for the goods, and as he has not insisted on indorsement, he cannot sue the buyer if the bill turns out worthless, for the bill has been simply exchanged, with all its faults, for the goods. As to the case of some of the signatures being forged, &c., see chap. iv, sec. 10.

But a bill may in the same way, by agreement between the parties, be taken, not only upon such a bargain as that just mentioned, but for a pre-existing debt. In fact, a debtor may, by express agreement with his creditor, give him a bill payable to bearer without indorsing it, so as to be at once, and whether eventually paid or not, a satisfaction and payment of the debt.



3. But though, in the absence of an agreement, a creditor does not receive payment of a debt by simply taking the bill or note of his debtor, yet if his debtor be a firm, and he takes the separate note of one of the partners, he will be taken to have discharged the firm, and to rely solely upon the single partner, unless, of course, there were an express agreement that the others should remain liable. This is because, in the case of the bankruptcy of the *firm*, or the death of the partner, the creditor might be in a far better position than if he had the whole firm as his debtors, and this advantage amounts to a consideration.

4. If the bill or note be lost, the debt is discharged; but by a recent Act the owner may sue on the instrument, and recover the money, on giving an indemnity to the satisfaction of the Court.

5. Where a man has a lien on goods, and he takes a bill or note for the debt, the lien on the goods ceases, and he must give them up to the owner, unless there is an express agreement for him to keep them.

6. When a renewal bill or note is dishonored, the right to sue on the old bill or note revives.

Where a man is bound by deed to pay money, the taking a bill or note from him does not extinguish or suspend the right to sue him upon the deed.

If he owe money for rent, and give a promissory note for it, the landlord may still distrain at any time till the note is paid.

If on borrowing money a man covenant to pay it by deed, as by giving a mortgage, and give a bill or note at the same time by way of collateral security, the creditor may sue either on the deed or bill; but where it is not so intended, the right to sue on the bill is merged or swallowed up in the right to sue on the deed.

---

## CHAPTER VI.

### OF ACCEPTANCE.

1. *Meaning and nature of.*
2. *General Acceptance.*
3. *Special Acceptance.*
4. *Qualified Acceptances.*

5. *When Bill may be accepted—date.*
6. *Delivery must accompany Acceptance.*
7. *What may be treated as a refusal to accept.*
8. *Acceptance for honor of Drawer.*
9. *What is admitted by Acceptance.*
10. *How Acceptor may be discharged.*
11. *Who must accept?*

1. Acceptance only applies to bills.

When the drawee irrevocably assents to pay the bill in money when due, he is said to *accept*.

Acceptance in this country of bills, whether inland or foreign, must be by writing on the bill, signed by the acceptor, or some person duly authorized by him in his name.

Acceptances are of three kinds, general, special, and qualified.

2. A general acceptance may be by writing, "Accepted," or "Accepted, payable at Drummond's bank," or by similar words, followed by the acceptor's signature. As to the presentation of a bill so payable, see chap. viii, sec. 4.

3. A special acceptance is where the word "Accepted," is followed by words which do not merely *indicate*, as in the last instance given, the place where the bill is to be payable, but *restrict* its payment to that particular place and no other; as, for instance, "Accepted, payable at Drummond's bank, and there only," or similar words.

4. A *qualified* acceptance is where a man accepts a bill for only a portion of the amount for which it is drawn; and this may be done by writing "Accepted for £100 only." If a bill were drawn payable at three months, and were accepted "payable at six months," or "on condition of its being renewed for three months," or with other words to the like effect appearing on the face of the bill, this would be a partial acceptance.

There is also a kind of acceptance called *conditional*, by which the bill is made payable only on the happening of a certain event; but now that acceptances must be in writing, it is necessary that the condition (if any) should appear on the face of the acceptance.

5. A bill may be accepted when the time at which it is made payable has elapsed, and then the acceptor will be liable immediately. If the bill be drawn payable

so many days "after sight," the *date* of the acceptance should be appended, and the time will count from the day of acceptance.

6. None of these acceptances will be complete unless accompanied by a delivery of the bill to the person presenting it for acceptance. If the drawee have written an acceptance across the bill, he can cancel it at any time while the bill is in his possession, or at all events till he has intimated his intention to accept.

7. If the holder be entitled to a general acceptance, and the drawee refuse, and make a special or qualified acceptance, the holder may treat the bill as dishonored by non-acceptance, may have it noted, and advise the prior parties, if any, of a refusal to accept.

If the drawee be discovered to be incompetent to contract, as by being an infant or married woman, the holder may treat the bill as dishonored.

8. Where the bill is in the hands of a payee or indorsee, and the drawee cannot be found, a stranger may, by going before a notary, accept the bill, after it has been protested, for the honor of the drawer or indorser. He then writes across the bill, "Accepted, S. P." (or *supra* protest), "for the honor of A. B." or these latter words may be omitted. He then signs his name.

9. The acceptor is bound to know the handwriting of the drawer; therefore by acceptance the signature and capacity of the drawer are admitted, and the acceptor cannot afterwards shew that the drawer's signature was forged, or that he was incapable of contracting.

The acceptor also admits the capacity of the payee to receive, and consequently to indorse, and cannot afterwards shew his inability to do so, or that she is a married woman, &c.

But if the bill when accepted is *already indorsed* in the name of an existing person, and the name turns out to have been forged, the acceptor may shew this fact when sued on the acceptance by the indorsee, and it will then be a question whether the acceptor meant to give currency to the bill in spite of the forgery, in which case he will be liable upon it.

Where the drawing is by procuration, the acceptor only admits the authority to draw, but not that to indorse.

When the bill is drawn in a fictitious name, the acceptor undertakes to pay to an indorsement by the same hand.

If the acceptor's name be written by some other person, and the acceptor afterwards gives currency to the bill by admitting it to be his own, or treating it as such, or ratifying the act, he is liable.

10. An acceptor may be discharged by a holder *expressly* renouncing his claim, and for the *whole* amount, and this may be before or after the bill is due. The renunciation may be verbal, or in writing, or by cancelling the acceptance. But if it be verbal, or by writing separate from the bill, and before due, it will not affect the right of any person to whom the holder may transfer for value and without notice. (See chap. xi.)

If a third person cancel the acceptance, the acceptor will only be discharged if it was done by the consent of the holder.

The holder may of course lose his claim on the acceptor by taking a new security in the place of the old one;—so easy is this that, if there are two joint acceptors, the separate note of one of them may be a renunciation of the holder's rights against the other.

No one can discharge the acceptor but the holder, or some one authorized by him.

11. The question, who may accept? depends upon the question upon whom the bill is drawn? If upon a single individual, who refuses to accept, no one else can accept, unless, as before mentioned (sec. 8), for the honor of the drawer; if upon two or more persons in partnership, any one partner can (see chap. ii) bind the firm; but if upon several persons not partners, they must *every* one accept, or the bill may be treated as dishonored; but those who accept will be bound.

---

## CHAPTER VII.

### OF PRESENTMENT FOR ACCEPTANCE.

1. *Always desirable, sometimes necessary—notice of refusal.*
2. *Presentment, how to be made.*
3. *When excused.*

1. Every bill should be presented by the holder for acceptance without delay, for if the bill be accepted, he has the acceptor's security; and if the acceptance be refused, then the prior parties become *immediately* liable.

For this purpose, in the event of refusal, notice of non-acceptance, i. e. of dishonor, should at once be given.

Though presentment for acceptance is always desirable, and though upon non-acceptance prior parties are *always* chargeable, yet it is only in case of bills payable *at sight*, or a certain period *after sight*, that such presentment is absolutely *necessary*. But in all bills the holder may suffer for neglecting to present if he has been cautioned by the drawer to do so.

2. To procure the drawee's acceptance, the bill should be taken within a reasonable time, at business hours, to the place of business of the drawee, or his residence as described on the bill, or his other known place of abode, or such other place as he may have removed to in the neighbourhood, and it must there be presented to the drawee, or his authorized agent.

If the drawee have absconded, such presentment is excused. It is likewise excused by illness, or any other accident not attributable to negligence in the holder.

The drawee may keep the bill twenty-four hours for deliberation, but if he keeps it longer, prior parties should have notice, in order to make them chargeable.

If the drawee be dead, the bill should be presented to his personal representative.

3. Presentment of bills payable at or after sight is excused by their being in circulation.

## CHAPTER VIII.

### OF PRESENTMENT FOR PAYMENT OF BILLS AND NOTES.

1. *Necessity of.*
2. *How to be made.*
3. *Presentment of Bills payable at sight, how excused.*
4. *Other circumstances which excuse Presentment.*
5. *Where to be made.*
6. *Of days of grace.*
7. *Within what time Bills and Notes should be presented.*
8. *Rule does not generally apply to Note payable on demand.*
9. *Drawee's Bankruptcy, &c., no excuse.*

1. It is not in general necessary, in order to charge the acceptor or maker of a bill or note, that it should be

presented to him for payment when due or at any time after. An action may at once be brought.

[But a bill or note, payable at or after sight, must be presented in order to charge the acceptor or maker. And a bill accepted payable at a particular place *and there only*, and a note made *in the body of it* payable at a particular place, must be presented at that place in order to charge the acceptor or maker. (See ss. 2 and 4.)]

The consequence of a bill or note being not duly presented for payment to the acceptor or maker is, that all the antecedent parties will be discharged from their liability, whether on the instrument or on the consideration for which it was given.

The rules relating to presentment for payment will therefore require attention.

2. Presentment for payment (unlike presentment for acceptance) need not be personal, for it is enough if the bill or note be shewn to a wife, servant, or clerk of the acceptor, at his residence or place of business. It is the duty of the acceptor to provide for payment if he be absent himself.

When a bill is payable *at sight*, presentment for payment and acceptance are identical, at all events as to time, and therefore presentment for payment will, as well as that for acceptance, be excused by putting such bills in circulation. (See chap. vii, sect. 3.)

The acceptor of a bill is always liable upon it after due, whether presented or not; but it is absolutely essential, in order to make *the other* parties liable upon the bill, that it should be presented to the acceptor for payment *on the day* when it falls due. (But see sect. 5.)

3. The case of a bill payable at sight, or at a certain time after sight, and kept in circulation, differs, as we have seen, from the case of ordinary bills; for, however long a bill payable at or after sight may have circulated, the holder in whose hands it ultimately finds itself may present, and in default of payment by the acceptor, may recover against the other parties.

4. There are a few other circumstances which are said to *excuse* the holder from presenting for payment, *i. e.* circumstances under which he may still sue the prior parties, though the bill may not have been presented for payment at maturity.

The principal of these are, where the drawee absconds,

(though not where he merely changes his residence;) where the bill is actually lost; and where it has been seized by the Crown under a form of execution called an *extent*.

5. As to the *place* where the bill may be presented for payment, this depends on the form of the acceptance. (See chap. vi.) With reference to place, there are three modes of acceptance: (1) the general acceptance, by writing the word "Accepted," and signing the acceptor's name; (2) by adding after the word "Accepted," and before signature, the words "payable at A. B. and Co.'s;" (3) by adding to the last-named form the words "and there only," or equivalent words. (See chap. vi.)

The effect of the first is that the bill must be presented to the acceptor at his residence or place of business, or if he have neither, then to him personally.

In the second case, the bill may be presented either at the bank named, or at the acceptor's residence or place of business. But in order to change the *drawer* or *indorsers* of a bill, or the indorsers of a note, it must, even in this case, have been presented at the place specified.

And in the last case, the bill can only be effectually presented at the bank mentioned.

Where no day is named on which a bill or note falls due, it is payable on demand, the same as if so expressed.

A bill, though drawn in the body of it payable at a particular place, will be payable anywhere unless expressed to be payable *there only*; but a *note* made, *in the body of it*, payable at a particular place, though *not* expressed to be payable there only, must be presented at the particular place.

6. With respect to bills or notes payable at a specific time, as, for instance, six months after date, and also in case of a bill payable after sight, *three days are added* to the time when the bill or note nominally becomes payable, so that if a bill be on its face payable on the 3d of the month, it will not really be payable till the 6th, and that is the day on which it must be presented.

These three days are called "*days of grace*," and are different in different countries, being dependent on the custom of merchants, incorporated into the law of the land.

A presentment for payment before the expiration of these days is premature.

When the last day of grace falls on a Sunday, Christ-

mas Day, Good Friday, or public fast or thanksgiving day, the bill must be presented on the day *before* such day, and if not then paid will be dishonored.

A bill at one month, dated the 31st of January, would nominally become due the 28th of February, and, with days of grace, would be payable on the 3rd of March.

7. Bills and notes must be presented within *reasonable hours*, i. e., before seven or eight in the evening; and if payable at a bank, during banking hours.

If the instrument be payable on demand, and has to be sent by post to be presented to the acceptor or maker, the person sending it should do so the day after he has received it, and the person to whom it is sent by post should present it before the end of the day following that on which he has received it.

8. This last rule does not apply to an ordinary promissory note payable on demand, especially if made payable with interest; for such instruments are often meant to be a continuing security for money, and parties often go on paying interest upon them for many years. But if the indorser of such a note be sued by an indorsee, the defendant may set up the defence that the note was not presented for payment within a reasonable time, and he may then shew to the Court any contract or special circumstances from which it may be inferred that the bill in question should have been presented earlier.

9. But presentment for payment will not be excused by the bankruptcy or insolvency of the drawee of a bill or maker of a note, for payment may be made by his friends; nor will a mere threat by the drawee of a bill not to pay, though made in the presence of the drawer, be any excuse for not presenting the bill at maturity.

---

## CHAPTER IX.

### PAYMENT.

1. *Consequences of Refusal.*
2. *When Payment may be made.*
3. *To whom the Acceptor or Maker must pay.*
4. *Exception in favor of Bills or Notes payable to Bearer.*
5. *By whom payment must be made, so as to put an end to the Bill or Note.*



6. *Bill or Note may be paid any number of times before maturity.*
7. *Bill or Note payable on demand.*
8. *Payment may be by Money, or in other ways.*
9. *Of proof of Payment.*

1. The holder of a bill or note may, if payment be refused by the acceptor or maker on presentment, immediately give notice of dishonor to all or any of the earlier parties to the instrument, as to which, see chapter xiii, on "Notice of Dishonor."

2. But the maker or acceptor has the whole of the day of the presentment in which to pay, and if he pay on that day, though after a refusal, the payment is good, and the notice of dishonor, if given, falls to the ground.

3. No payment will discharge the maker or acceptor, unless it be made to the true holder. For instance, if the drawer have indorsed an accepted bill to his bankers, who give him credit for it, and the acceptor at maturity pay to the drawer, the acceptor is liable to be sued by the bankers, and may have to pay over again.

Therefore, to have the bill given up on payment is a necessary precaution, though not always a complete one.

If the bill or note be not payable to bearer, that is, if it has required indorsement to make it the property of the holder, the acceptor or maker should be satisfied, on paying the money on presentment, that the indorsement is genuine; for if it be forged or made by an unauthorized person, the payment will be no discharge, and the money may have to be paid over again.

4. To the rule that no payment, save to the true holder, will operate on a discharge, there is an exception in favor of bills or notes made or become payable to bearer. Not only does a person who has taken such instruments *bonâ fide* and for value from one who has found or stolen them, acquire a title to them so as to be able to recover on them, but a payment made *bonâ fide* and *without negligence*, even to the finder or the thief, will discharge the party paying, though the finder or the thief could not recover on the instrument in a Court of Law.

5. If a bill be paid by the drawer, the holder may still at the drawer's request sue the acceptor on it, and thus re-imburse the drawer, or the drawer may himself sue the acceptor.

This rule arises from the acceptor being the person primarily liable, and therefore does not apply to accommodation bills, in which, as we have seen, the drawer is usually the person primarily liable. Payment by the drawer, therefore, of such bills is a complete discharge of the bill.

A bill or note is always discharged when paid by the acceptor or maker, after which it cannot be circulated again, nor can any action be brought upon it.

But, a bill may be paid at maturity by the drawer or indorser, in which case the person paying has his remedy intact upon the bill. This is called *retiring* a bill or note, a word sometimes improperly applied to a payment by the acceptor.

It may sometimes be a question whether an indorser paying a bill does so as the agent of the acceptor, or for the purpose of retiring the bill.

A payment by a stranger, as for instance, a friend of the acceptor or maker, need not necessarily be a payment by the acceptor, so as to put an end to the bill.

6. Though a bill is discharged when paid at maturity by the acceptor or maker, yet it may be paid any number of times before it is due, and may be circulated anew between each payment. For example, the acceptor or maker of a bill or note, made or become payable to bearer, and not yet due, may pay the present holder, and straightway for a consideration give the instrument to another. Or if a bill payable to bearer be paid by the acceptor before it is due, and, instead of being destroyed, get lost, and the person finding it give it to a *bond fide* holder for value, such last-mentioned holder may recover on it at maturity.

7. A bill or note payable on demand can never be prematurely paid, and, therefore, a payment on demand of such a bill will be a defence even against an indorsee for value without notice of the payment, for such bills are *prevented by statute* from circulating again. Extreme caution should on this account be used in taking such bills, which may be utterly valueless.

8. Payment may be made in money or by means of any other consideration. Payment of a smaller sum can never be satisfaction of a larger sum. (But see chap. xi, sect. 1.) If it be made by a cheque, as is often the case, and the bill be given up to the acceptor, and the cheque be dishonored, the drawer and indorsers will be dis-

charged; for they, when *they* pay, have a right to have the bill given up to *them*, and, if the acceptor has the bill, this is impossible.

It has been held, nevertheless, that an agent, unless ordered to the contrary, is justified in giving up the bill on receipt of a cheque.

The same result would probably be considered to arise if the payment were made in bank notes, and the banker were to fail.

9. When payment is made by the acceptor, it is usual to give a receipt on the back of the bill, for which no further stamp is required. Such a receipt, being seldom given upon payment by other parties, is *prima facie* evidence that the bill was paid by the acceptor.

When a man is sued upon a bill or note, and he produces a cheque for the amount of the bill or note drawn by him, and which has passed through his banker's hands, and bears the plaintiff's name at the back, this raises a presumption of payment, unless there have been so many dealings between the parties that it is impossible to say to which the cheque in question relates.

If the receipt be given on a separate piece of paper, it will not be admissible in evidence without a stamp; but though it cannot be seen by the jury in a civil proceeding, yet it may be shewn to the witness to refresh his memory, and if he persists in denying the receipt, the document will be admissible against him in a criminal proceeding, as, for instance, an indictment for perjury.

After a lapse of twenty years, a promissory note payable on demand is presumed to have been paid.

## CHAPTER X.

### APPROPRIATION OF PAYMENTS.

A few rules are necessary on this subject with reference to cases where there may be current accounts, or several debts owing by one party to another.

1. The payment of money is appropriated (*i.e.* applied to a particular debt), at the choice of the party paying.

2. If no such choice were made, then the creditor may choose to which debt the money shall be applied.

3. Where there is an account current and the party

paying is silent, it is presumed that he intends the payment to apply to the earlier items.

Where the debts are *distinct*, the creditor may, in the absence of any appropriation by the debtor, appropriate the payment to any debt he pleases, but he will be bound by any communication he may have made to the debtor of the way the payment is appropriated.

The same rules apply to a payment by a third party. But where a third party pays money to the creditor for the debtor, the creditor cannot appropriate the payment to a particular debt without the consent of the person paying.

From these rules, it will be understood that if A be liable to B upon three bills of £100 each, and pay him £100 without saying for which bill the payment is meant, B may wait to appropriate the payment till such time as he sues upon the other bills. It might be a matter of great advantage to him to be able to exercise this power, because he has all the intervening time to see which of the bills will be satisfied by other parties.

## CHAPTER XI.

### SATISFACTION, EXTINGUISHMENT, AND SUSPENSION.

1. *Accord, and satisfaction of a debt due on a Bill or Note.*
2. *Release before and after maturity by word of mouth, writing, and deed.*
3. *Considerations which may by consent (i. e. "accord"), amount to satisfaction of a Bill or Note.*
4. *Difference between taking a Bill or Note in satisfaction and discharge of a debt, and taking it in payment of a debt.*
5. *Bill indorsed to one of several joint acceptors.*
6. *Discharge of acceptor is discharge of other parties.*
7. *Miscellaneous matters connected with the subject.*

1. There are other circumstances under which a bill or note may be as much satisfied, and the remedies on it extinguished, as by means of payment strictly so called.

Although, as we have seen (chap. ix, sec. 8), part payment by the party owing a larger sum can never satisfy the whole debt, yet such part payment, if accompanied by an act done at the request of the creditor, will amount to such a

consideration, as is capable of effecting this object. If, for example, it be agreed between the acceptor and the holder of a dishonored bill for £100, that the acceptor shall pay 6d. in satisfaction of the debt, this consideration will be insufficient; whereas, if to the payment of 6d. it be agreed to add the delivery of a loaf of bread, the bill will be thereby discharged; and this may be done though an action has been brought. This is called "*accord and satisfaction.*"

2. *Before maturity*, a bill or note may be discharged either by deed (*i. e.* writing under seal), or by other writing, or by word of mouth; in either case, *without any consideration*. If, however, the bill or note should not be given up, or a memorandum made on it, the holder may frustrate what he has consented to do, by transferring the bill or note to a *bona fide* holder for value, without notice.

*After maturity* a release (strictly so called) can only be effected by deed, for which, however, there need be no consideration, and this binds the releasor's transferees, who, though they have no notice of the release, yet cannot recover on the bill; for the bill being overdue, should put them on their enquiry. (But see sec. 1.)

3. A bill taken from one of two partners in his own name, may be a satisfaction for a joint debt.

Foregoing a defence to a suit may be a satisfaction of a debt.

Taking a *bill* or *note* for a smaller sum may be a satisfaction for a larger sum, for the negotiable quality of the instrument confers an advantage, as does also the more effectual remedy afforded by law upon such instruments.

4. If a creditor takes the bill or note of a third person in *satisfaction and discharge* of a debt owing by another, the debt will then be extinguished, and it will not revive on the dishonor of the security; but it is always a question for a jury, whether the instrument be so taken, or merely by way of further security, or on account.

If a bill or note be given by way of payment of a debt, no action can be brought for the debt till the maturity of the bill or note; also, if another bill or note be given by way of renewal of a former bill or note, no action can be brought till the maturity of the second bill or note.

5. A bill indorsed in blank to one of several acceptors, and in his hands when due, can neither be sued on by the holder, nor transferred by him so as to confer a right against any of the acceptors.

6. Whenever the acceptor, or maker of a bill or note, is discharged, all the other parties are discharged, for the surety is always discharged by the discharge of the principal.

A judgment recovered against one acceptor of a bill or joint maker of a note, is an answer to an action against the others; otherwise of a judgment against a joint and several maker of a note. (Acceptances are always joint.)

7. Issuing execution against either the body or goods of one party does not discharge the others; but discharging a party whose body has been taken in execution, will operate as a discharge to all those parties to the instrument who stand as his sureties, a relationship which will presently be explained. (See chap. xii, sec. 3.)

Waiving the right of taking his goods in execution will not have the same effect.

A bill or note is discharged by taking a co-extensive security by deed, but only as regards the party executing such deed; unless the deed were taken from the acceptor or maker; for in that case, of course, all the parties are discharged.

But the security must be strictly co-extensive; for instance, a note will not be discharged by taking the bond of one of two joint *and several* makers for the money. This is a difficult subject, on which advice will always be sought.

## CHAPTER XII.

### PRINCIPAL AND SURETY.

1. *General meaning of the words*
2. *Suretyship may arise on the Bill or Note, or by independent contract.*
3. *Of the different relations of principal and surety arising among the parties to a Bill or Note.—Discharge of principal is discharge of surety, &c.*
4. *What indulgence the holder may grant to acceptor or maker, without discharging drawer and indorsers.*
5. *Of suretyships by independent contract, or guarantees, and the rights under them.*
6. *Sureties—when discharged by taking a renewal Bill.*
7. *Judgment.—Taking composition from acceptor or maker.*
8. *Under what circumstances the sureties will remain liable.*

9. *Where the principal and surety jointly sign a Bill or Note.*
10. *Surety who has paid may sue his principal.—Contribution among co-sureties.—Insolvent surety.*
11. *Position of acceptor for honor.*

1. Without an elaborate definition of the word "Principal," it will be understood that the principal debtor is the man who is primarily liable as the person himself owing the money; and the surety is, in relation to the principal, one who in some way or other may be obliged to pay the money in default of the principal; *i. e.* the surety is the person secondarily liable.

2. This relationship may attach to a person either by his becoming party to a bill or note, or by an independent contract.

3. First, as to the relation of principal and surety arising upon the instrument itself.

The acceptor of a bill and the maker of a note are the principals, being the persons primarily liable upon the instrument.

All the other parties are sureties to the principals; but each is a principal to those who follow him.

Looking at the matter from the holder's point of view, the acceptor is, at maturity, his principal debtor, and the drawer and indorsers are all the acceptor's sureties; the indorsers are again sureties for the drawer, and the third indorser is surety for the second indorser, (the *first* indorser being the drawer.)

When the acceptor of a bill or maker of a note is discharged, all the other parties are discharged, for the surety is always discharged by the discharge of the principal. (See last chap. s. 6.)

A discharge to prior parties is a discharge to subsequent parties, but a discharge to subsequent parties is not a discharge to prior parties.

This is because the subsequent parties may, if compelled to pay the bill or note, sue the prior parties, but the latter cannot, on such payment, sue the subsequent parties.

But, if the acceptor be bankrupt, the holder may prove under the commission, the discharge in this case being by act of law, and not of the holder himself; and he may for the same reason sue the drawer and indorsers. The fact of the bill being an accommodation bill, even if the holder knew it, would make no difference.

In the case of a note, the relations are the same, the indorsers being sureties for the maker. It makes no difference if the note be given gratuitously. But this is, of course, subject to the rule that no man can sue on a bill or note the person from whom he gratuitously received it.

4. The holder may be as negligent as he pleases in suing, prosecuting his suit, obtaining judgment, and issuing execution against the person primarily liable, and he may still, until the suit is barred by the Statute of Limitations, sue the persons liable as sureties.

But, if the holder once, by a binding contract, part with or suspend, for however short a time, the *right* of suing to judgment, or of obtaining the fruits of a judgment against the person primarily liable, those liable as sureties are discharged, unless the loss or suspension of the rights against the principal took place with their sanction; for the surety always has a right to pay off the debt and recover.

But, to effect the discharge of the sureties, the suspension of the remedy against the principal must be by an agreement, which, whether written or verbal, binds the creditor; a mere promise of forbearance without consideration will not have this result.

A bargain may, however, be made not to sue for a certain time, with a proviso that if the money be paid, the creditor may have a judgment as soon as he might in the regular course. This will leave untouched the liability of the sureties.

5. The same rules apply equally to suretyships contracted by agreement, independent of the bill. These agreements, usually called guarantees, can only be made in writing, and cannot be made binding, unless they are either made by deed, or there is some consideration.

6. The taking a new bill or note from the person primarily liable, payable at a future day, discharges the sureties, for it interferes with the right of the surety *at any time* to pay off the debt, and recover against his principal.

This is the same whether they are sureties on the bill, or by independent contract.

If, however, the second bill be taken only by way of collateral security, *i. e.* if the right to sue on the first be not thereby suspended, the sureties, whether on the bill itself, or by independent contract, are not discharged.

Taking a new bill from, or suspending the remedy



against a subsequent party, never discharges a prior party.

7. The holder of a bill may sue all the parties at the same time, or one after the other, and a judgment against any will not be a satisfaction as to the rest.

If the holder takes a composition from the acceptor or maker, the other parties are discharged. Part payment, of course, has no such effect.

It is presumed, also, that the drawer and indorsers of an unaccepted draft will be discharged if the holder gives the drawee a longer time to accept than according to the tenor of the draft.

8. But if it be agreed between the holder and the principal debtor that the sureties shall remain liable, they will then remain so; for it is presumed the sureties can then at any time pay off the debt, and recover against the principal debtor, and it is on the continuance of this right that the continuance of the surety's liability depends.

But, this is subject to the rule that if one person, *jointly* liable, be discharged, the other joint contractors are discharged also. [As to the distinction between *joint* and *joint and several* liability, see chap. xix, sec. 1.]

[Throughout this chapter, the word "principal debtor" may be used as synonymous with "person primarily liable;" the holder will then be, in general, the creditor, and the drawer and indorsers (or, in case of a note, the indorsers) the sureties.]

Again, if the surety consent to the principal debtor having time to pay, the former will not be discharged; so also if, *after* the time has been bargained for between the principal debtor and creditor, if the surety ratify the course adopted, he will not be discharged, but will have *waived* his right.

Both the prior consent and the subsequent ratification may be verbal as well as in writing. It is very easy to see what will constitute a *consent*; but a surety should be very careful that what he says does not amount to a *ratification*. If the surety says, "I know I am liable," or, "I will pay, if he does not," this will constitute a *ratification*; but merely saying, "It is the best thing that can be *done*," has been held not to do so.

9. It sometimes happens that a person, in order to obtain credit, procures another to join him in making a *joint* note, or, *jointly* accepting a bill (see chap. xix, sec. 1). In this case, the relation of principal and surety is only by

arrangement with one another, and differs from that which appears on the face of the instrument, or is created by an independent contract with the creditor; for as both are *jointly* liable, the discharge of *either* operates as the discharge of both. Whereas, in ordinary cases, the surety may be discharged, and the principal held liable.

10. When a surety has paid an overdue bill, he has his remedy against his principal; nay, if he pay by instalments, he may bring a separate action for each instalment.

Where there are several sureties for the whole amount, each is liable to the creditor for the whole, but, among one another, each is only liable for his share; therefore, if one pay more than the others, he may sue the others for contribution.

If one become bankrupt or insolvent, and can pay nothing, each of the others is, at law, only liable to contribute to the extent of his original proportion; but in equity, *i. e.* in Chancery, each is liable for as large a proportion as if the bankrupt or insolvent had never been reckoned among the number.

11. The acceptor for honor (see chap. iv, sec. 8) is a surety for the person for whose honor he accepts, whether drawer or indorser, and for all parties antecedent to him.

It is not till the bill has been presented for payment to the drawee, when due, that the acceptor for honor becomes primarily liable to all parties subsequent to him for whose honor he accepts. When the bill accepted for honor has been presented for payment to the drawee and dishonored, the holder may sue the acceptor for honor.

But the latter is, as between himself and the person for whose honor he accepted and parties antecedent to that person, a mere surety; and therefore, when he has paid the bill, he can compel any of such parties to reimburse him.

And the holder must not discharge the person for whose honor the bill was accepted, or any person prior to him, for then the acceptor for honor, being but a surety, will be discharged.

## CHAPTER XIII.

### NOTICE OF DISHONOR.

1. *Necessity for and object of the Notice.*
2. *Tenor of the Notice, with Examples and Form.*
3. *Who alone can give an effectual Notice.*

4. *Who are entitled to receive Notice.*—Best course for holder to take.
5. *Time within which Notice must be given, and reasons for advice given in last section.*
6. *Banker or Agent is a separate party as regards time for Notice.*
7. *Mode of sending Notice, and Evidence.*—Caution to prevent failure of proof.
8. *Notice personally served in writing.*—Verbal notice.
9. *On whose behalf given.*
10. *Need not be personal.*—Clerk, wife, &c.
11. *Party bankrupt or dead.*
12. *Party guaranteeing Bill.*—Party liable on Bond or Mortgage as well.
13. *Notice to one of several who are jointly liable, is Notice to all.*
14. *Notice should be posted so as to arrive before writ is issued.*
15. *Principle on which Notice is required, and herein of circumstances that will excuse Notice.*
16. *Promises, Admissions, and Agreements, which will dispense with Notice.*
17. *Holder's ignorance of a party's residence.*
18. *Accident, Illness, Lost Bill.*
19. *Implied consent to dispense with Notice.*

1. When acceptance of a bill is refused on presentment for that purpose, or when payment of a bill or note, on its being presented when due, is refused by the acceptor or maker, the holder cannot sue the drawer and indorsers of the bill or the indorsers of the note, unless they each of them receive within a certain time notice of dishonor, which is a means of communication substituted, in this country, for notarial protest.

[As to notice of dishonor for *non-acceptance*, see chap. vii, sec. 1.]

The object of the notice is both to apprise these parties of the fact of dishonor, and to let them know that they will be called upon to pay.

2. It is advisable to give the notice in writing, though it is sufficient if only verbal.

The principal reason why the notice should be in writing, is to make sure of its being distinct, and that it may shew, if produced, that it gives the desired information.

To shew the requisites of a notice of dishonor, the following examples of notices are given, with reasons for their goodness or insufficiency.

To begin with insufficient notices:—

"Your draft upon A. B. lies at my house due and unpaid," is bad, because it is quite consistent with the notice that the draft may never have been presented for payment, nor even have been accepted.

"Your draft upon A. B. accepted by him, lies at my house due and unpaid," is bad, for it does not state presentment for payment.

But "Your draft upon A. B. accepted by him has been duly presented for payment, and lies at my house due and unpaid," will do, for it gives every essential information.

In the same way, "Your bill (or note) is returned dishonored," is a perfect notice, for the word *dishonor* implies both acceptance and presentment.

Again, a statement that a bill or note is unpaid, and that the *charges* or the *noting* come to so much, is a good notice by implication; for these words clearly indicate acceptance (of a bill), presentment, and non-payment, or in the case of a note, presentment and non-payment.

From these examples it will be seen that though no particular form is necessary, yet the choice of words is a matter of great importance.

The following is the form given in Mr. Justice Byles' work, and it will at once be seen to be an amply sufficient notice from the holder to an indorser, and may be altered according to circumstances.

No. 1, Fleet Street, London;

SIR,

26th Sept., 1842.

I hereby give you notice, that the Bill of Exchange, dated the 22d ult., drawn by A. B. of ———, on C. D. of ———, for £100, payable one month after date to A. B. or his order, and indorsed by you, has been duly presented for payment, but was dishonored and is unpaid. I request you to pay me the amount thereof.

I am, Sir, your obedient Servant,

G. H.

To Mr. E. F. of ———, Merchant.

If the notice may apply equally to more than one bill, it lies on the defendant to prove this fact. In case of misdescription of an instrument, as by calling a note a bill; or *vice versa*, or transposing the names of the drawer or acceptors, &c., it is no objection, unless mistake or

inconvenience have arisen, which it lies on the defendant to prove.

3. The person giving the notice, though he need not be the actual holder, must be not only a party to the bill or note, but one himself liable, or capable of being liable, to pay the money. Thus, a notice is insufficient if given by a party who, not having himself received notice in due time, is discharged by the negligence of the party antecedent to him. For example, if the holder of the bill, being the second indorsee, have not given notice in time, or at all, to the first indorsee, a notice by the first indorsee to the drawer will not entitle the holder to sue the drawer.

4. All parties are entitled to receive notice, save the maker of a note and the acceptor of a bill; and the best thing for the holder of a dishonored bill to do, is to give notice at once by post to all the indorsers, and, in case of a bill, to the drawer also.

5. This brings us to the time allowed for giving notice. The rules for this are as follows:—

Where the person giving the notice and the person to whom it is sent both live in the same place, the notice must be given so as to be received the next day after dishonor, or after receipt of notice of dishonor.

Where they both live in different places, the notice must arrive as early as a letter would arrive, if posted on the next day after dishonor, or after receipt of notice of dishonor.

This is the best course for the holder to adopt, for it makes sure that each of the parties receives notice in due time. This time is reckoned on the supposition that each party, from the holder upwards, gives notice to the party from whom he has taken the bill, and the time allowed for each notice is dependent on whether the giver and recipient of it live in the same or in different places.

Now, it is plain that if the holder gives notice only to *his* indorser, the power of the holder to sue any other party will depend on whether the indorser is prudent or diligent enough to give notice to the person from whom *he* received the bill, and so on through all the parties up to the drawer.

So that, if the holder has not himself given notice to the person whom he sues, it will be necessary to prove the due transmission of notice through each of the prior parties, and that, too, in proper time—for the diligence of one is not to compensate for the negligence of another;

*i. e.* if any party is himself discharged for want of punctual notice, a notice from him can in no case bind another party. (See sec. 3.)

Hence the advice given to the holder to give notice at once by post to as many prior parties as he is able to send to.

6. It may be here mentioned that when the bill is in the hands of an agent, as an attorney or banker, he is considered as a separate party, as regards time for giving notice.

7. The usual way of giving notice, particularly where the parties live at a distance, is by post, for it not only has the advantage of the distinctness of a written communication; but if the letter is properly addressed and miscarries, the sender of the notice does not lose his rights, and *has merely to prove the posting* of the notice.

In order to prove the sending of the notice, it is necessary to call as a witness the person who posted it, and also the writer or some one else who can speak to its contents; it is therefore as well that the writer should also be the poster. It will be sufficient proof of posting, however, if the writer of the notice deposes to putting it in a box or on a table for posting, and a servant afterwards deposes that he always posts all the letters so placed.

It may here be as well to give this caution to prevent the failure of evidence of notice. If you have made a copy of the notice, or an entry or memorandum of the writing or posting of the notice, of which, from the multiplicity of your business or from other reasons, you have no *independent* recollection, you should bring the copy or memorandum into court, for it will not be sufficient to have refreshed your memory with it previous to giving evidence. If you have an independent recollection, of course all reference to the copy, memorandum, or entry, is unnecessary.

The notice should be sent to the residence or place of business of the person for whom it is intended. If the notice reaches him it does not matter whether it be rightly addressed, and if it be rightly addressed it will be treated as if it had reached him, though he truthfully denies it, for the sender is not to suffer by the failure of the post.

If the notice be sent to the address of the party given on the bill it will be treated as having reached him,

though he truthfully denies it; so also if a mistake be fairly made in the address, owing to the illegibility of the writing on the bill.

8. Notice may be personally served in writing, or may be left in writing at the residence or place of business of the party, or it may be delivered by word of mouth to the party himself or to his clerk at his place of business. In all these cases the person taking the notice must prove its delivery; and if it be in writing, one person may prove the writing and another the delivery.

9. The notice need not state on whose behalf it is given; but if it is stated to be given on behalf of any person, the receiver of the notice will be discharged from liability if, for any reason, he cannot be sued by the party on whose behalf the notice is said to be given; for instance, if it be sent by an early indorsee, who has not himself had notice, and is therefore discharged. (See sec. 3.)

10. Notice need not be personal, but will be sufficient if given to the clerk of a man of business at his office, or in case of a man not in business, to his wife at his house, for a man who becomes a party to a bill or note is expected to leave some one at his house or office capable of receiving notice. But it would not be safe to give notice to the clerk or wife of a party anywhere else than at his office or house respectively.

11. If a party be bankrupt he must still have notice, and so should his assignees if appointed, and in case the bankrupt have absconded, notice should be given to the messenger in possession.

If a party be dead, notice should be given to his personal representatives.

12. To one who has merely guaranteed the payment of a bill or note, notice need not be given unless he has contracted to receive it, or would be prejudiced by the absence of it.

If a man is liable on a bond or mortgage, or other independent instrument, and also as indorser of a bill or note for the same consideration, he may be sued on the deed without notice of dishonor of the bill.

13. Where two or more parties are jointly liable on a bill (see chap. xix, sect. 1, 2), notice to one is sufficient, whether they be general partners or not.

In the same way, if A draw on A, B, and C, notice of dishonor to the drawer is unnecessary, for, being also

an acceptor, he has himself been one of the parties who have dishonored the bill.

14. When we speak of notice of dishonor being necessary, we shall of course be understood to mean that it must be delivered before action brought, so that if there is any doubt about the writ being issued before the letter containing notice would in due course have arrived, the plaintiff will be nonsuited.

15. The reason why neglect to give notice discharges from all liability each party who should have received notice, is that, after a reasonable time, such parties may fairly presume that the bill or note is satisfied.

The drawer in particular would be injured if he were compellable to take up the bill without notice of dishonor, for the drawer is presumed to have effects in the hands of the drawee; and if the drawer have timely notice of dishonor, (whether by non-acceptance or non-payment,) he may be able to withdraw his effects from the hands of the drawee or acceptor.

And this brings us to the consideration of what state of facts, or conduct of parties, will *excuse* the holder from giving notice of dishonor.

The rule is, that every party is entitled to notice of dishonor who, when called upon to pay, may have any right to recover against any other party to the instrument. It is because they never come within this rule, that an acceptor or maker are *never* entitled to notice, being always, as regards the public, primarily liable.

By this rule, if the drawer has *at no time* during the currency of the bill had effects in the acceptor's hands, *i. e.* if the bill was accepted for the drawer's accommodation, and has always remained an accommodation bill, the drawer need not have notice of dishonor, for there is no one whom he can sue on the bill.

But if the bill was for the accommodation of the *acceptor*, the drawer will be entitled to notice, for, on paying the bill, he can sue the acceptor.

So, if the bill were for the accommodation of an indorser, the drawer will be entitled to notice, for, on payment, he can sue the indorser.

In case of a note, a corresponding state of facts can hardly occur.

16. But by promising to pay, a man waives his right to insist on the absence of notice, and it is the same though



the promise be made under a mistake of law, for all are presumed to know the law; but it will not be binding if made under a mistake of *fact*.

For example, if at the time the man made the promise to pay an overdue bill he supposed the bill to have been presented, while in truth it had not, the promise would not waive his right to insist on want of notice.

And the promise need not have been made to the plaintiff who sues on the bill, but will be binding, though the defendant have made it to a stranger, not a party to the bill.

If a party to the bill or note promise, before it is due, to pay it if dishonored, this does not dispense with notice, for it presumes notice will be given, and promises nothing but what the law would enforce. But if he tell the holder that he will call at the acceptor's and see if the bill be paid at maturity, this amounts to a consent to dispense with notice.

An agreement to dispense with notice binds the parties to the agreement, but leaves unaltered the necessity of sending notice to the others.

Sometimes a promise to pay, or part payment, have been treated not so much as a dispensing with notice, but as presumptive evidence that notice has *been received*, though a jury are not bound to draw the inference.

So, where the defendant had said to one who might have been entitled to sue, "I have been cheated out of the bill, and do not intend to pay;" and also where the defendant said that he did not mean to rely on the *informality* of the notice, notice of dishonor was in both cases presumed.

A statement by the drawee that he shall not meet the bill, and warning from him to the drawer to that effect, will not excuse notice, unless the drawer consent to dispense with it.

Where the drawer, having supplied the acceptor with goods, draws a bill on him, not payable before the goods may be expected to arrive, the drawer may be considered to have reasonable expectation that the bill will be honored, and this is equivalent to having effects in the acceptor's hands. There are other circumstances, too minute to be detailed at length, which will be considered to amount to reasonable expectation of payment, so as to entitle the drawer to notice, though there be no actual effects in the drawee's hands.

A drawer who himself made a bill payable at his own house, has been held not entitled to notice, for it might be presumed to be for his own accommodation.

The circumstances above laid down are, it will be seen, not patent *on the face* of the bill, but dependent on relations between the parties, which may or may not be accurately known to the holder.

It is therefore advisable not to rely on the excuses above mentioned, but, where practicable, to give notice to all parties, except the acceptor or maker.

17. The holder's ignorance of a party's residence will excuse notice of dishonor, provided due diligence be used to find out such residence; and due diligence is a question for a jury.

18. An accident, or an illness happening to the holder, will also be an excuse, so long as it incapacitates him from business.

Although a bill be lost, notice of dishonor must be given, for the bill may be paid with or without an indemnity, and may be even sued upon, if an indemnity is given to the satisfaction of the Court.

19. As before observed, where a party has agreed or consented to dispense with notice, the holder will be excused from giving it. And this agreement or consent may be by inference as well as direct expression; as where, before a bill was due, the holder was told by the drawer that he would call at the acceptor's and see if the bill was paid, this was held to dispense with notice of dishonor.

---

## CHAPTER XIV.

### OF THE ALTERATION OF BILLS AND NOTES.

1. *A material alteration, though by consent, renders the instrument useless.*
2. *What is a material alteration?*
3. *Different effect of alteration by indorsee and by drawer or payee.*
4. *Bill substituted for altered bill.*
5. *Alteration appearing on the face of the bill.*
6. *Hints for avoiding difficulties.*

1. It is a rule that all instruments in writing, and bills of exchange, and promissory notes among the number, are rendered void by any alteration in a material part, whether

made by a party to the instrument or by a stranger, unless all parties consented thereto.

But there is this further objection to the alteration of bills and notes, which makes them, when altered in a material part, useless altogether: namely, that the instrument as altered requires a new stamp, by virtue of the Stamp Acts; and this stamp is, by the same acts, prevented from being affixed to the bill or note after it has once been drawn or made.

An alteration in a material part, whether with or without consent, is, therefore, an *insuperable* obstacle to an action on the instrument, even in the hands of an innocent holder for value.

As the consent of all parties makes no difference, it is hardly necessary to say that the same result will follow, though the alteration be to the disadvantage of the party making it.

2. For the reasons above stated, it becomes of the *utmost importance* to a party taking a bill or note on which any change appears to have been made, to know (1) whether it arose from a slip of the pen, and (2) if not, whether it is a material alteration.

All changes in the date, the time of currency, the rate of interest, or the consideration, are material alterations within the rule.

The rule, however, does not apply where, though the bill has been drawn, yet it is still *in fieri*, i. e. does not yet exist as a complete available security; as if the draft were sent to the drawee for acceptance, and the latter before accepting requested further time, and the date or the time of currency were changed by the consent of the drawer and drawee.

So also a mere mistake may be corrected without infringing the rule, as, for instance, an obvious mistake in the date, or the omission of the words "or order." So a blank for the payee's name may be filled up by the person to whom the bill or note has been given, and who is meant to be the payee.

3. A material alteration by an *indorsee* not only makes the instrument void, but actually *extinguishes the debt*; for if the indorsee could compel payment from his indorser, the latter would bear the whole loss, being unable to recover from any other party. [But this does not apply to a conversion of a blank into a special indorsement. See chap iv, sec. 4.]

A material alteration by the drawer or the payee of a bill or the payee of a note, merely renders the instrument void, but does not extinguish the debt.

4. A party is not liable on a substituted bill given in renewal of an altered bill, unless he knew of the alteration at the time of giving the substituted bill.

5. Where an alteration appears on the face of a bill or note, it lies on the plaintiff who sues on it to show under what circumstances it was made, so as to satisfy the jury whether it was a mere correction of an error, or was made while the instrument was *in fieri* (see above, sec. 2), or was a material alteration made after the bill or note was complete.

6. It is therefore advisable that persons drawing a bill or making a note, should make every correction, as far as possible, explain itself, as by passing the pen through a word meant to be omitted, instead of erasing or completely obliterating it.

And if it is impossible to do this, as in the case above stated, of the acceptor refusing to accept unless the date or time of currency be altered, it is advisable in practice either to get a new stamp and draw the bill afresh, or, at least, to append a note at the back of the bill, signed by the acceptor, stating the alteration to have been at his request, and before acceptance.

With reference to the amount, if a change should be required, we have already seen under the head "qualified acceptance" (chap. vi) that the acceptor may reduce the amount by accepting for part only.

---

## CHAPTER XV.

### OF INTEREST.

1. *From and to what time.*
2. *Amount.*
3. *Miscellaneous matters.*

1. Interest is seldom expressed to be payable on the face of the bill or note, but when it is so expressed it is counted *from* the date of the *drawing* or *making*, and it is the same with a bill or note payable at demand.

When the bill or note is silent as to interest, it is counted from *maturity*, and in the case of a note payable on demand, from demand.

When the first demand made is by commencing an

action, the interest is reckoned from the service of the writ. As against an indorser, interest is only counted from delivery of notice of dishonor.

Interest is counted *to* the time of payment, but ceases after a tender.

2. The offence of usury is abolished, and therefore any amount of interest is recoverable if made payable by the instrument.

If the instrument is silent, five per cent. is the amount usually allowed, but if the principal might have been paid earlier but for the negligence of the plaintiff, a jury may diminish or altogether withhold interest.

3. If a party is liable by agreement to give a bill, (as for the price of goods sold,) he cannot escape his liability to interest by not giving the bill.

A party who guarantees the due payment of a bill is liable to interest.

A plaintiff may not only sue for interest originally, but may continue his action for it after the principal has been paid.

## CHAPTER XVI.

### OF FORGERY AND FALSE PRETENCES.

1. *What ?*
2. *Certain acts which amount to forgery.*
3. *Certain acts which do not amount to forgery.*
4. *Rights of parties giving and receiving forged bills and notes, and paying money upon them.*
5. *Money paid under mistake of fact may be recovered back.*
6. *Obtaining signature to bill or note by false pretences.*

1. Forgery is a felony punishable by penal servitude for life.

2. Without giving a definition of this crime, or laying down the general principles respecting it, it will be enough here to mention a few acts with reference to bills, notes, and cheques, stating whether such acts do or do not amount to forgery.

The following acts have been decided to amount to forgery, if done with fraudulent intent.

The writing by one man the name of another.

Writing the name of a fictitious person.

Writing a promissory note over the genuine signature of another, though on unstamped paper.

Writing a man's own name with intent that it should pass for another's.

Filling up a blank cheque with an unauthorized sum.

Obliterating, adding to, or altering the crossing of any cheque with intent to defraud. (See chap. xxi, sec. 11.)

Uttering any cheque so obliterated, &c., with intent to defraud.

Altering a bill, note, or cheque, whether by addition, subtraction, or substitution.

Where several join in a forgery each forges the whole instrument.

3. The following acts do not amount to forgery.

Writing words amounting to a bill or note over the signature of another purposely given, whether on stamped paper or not.

Drawing a bill upon a person with false addition or description to that person's name.

Uttering a bill, &c., by a man who represents that a signature on the bill is his when in truth it is another's.

Writing another's name, with the words "per procura-tion," without authority.

Drawing or making in *another's name* a bill or note for less than 20s., or one for less than £5, without complying with the statutory requisites, (see chap. xix, sec. 6,) for such instruments are simply void.

But informalities, or the absence of a stamp, do not prevent an offence amounting to a forgery.

4. With regard to the rights of parties giving, receiving, and paying upon forged bills, notes, and cheques, space will only allow of following general rules.

A *bona fide* holder for value cannot sue upon a forged bill or note, or even keep it against the man whose name is forged.

Therefore, if the acceptor or maker pay to a person who derives his title through a forgery, the payment is no discharge; that is, the acceptor or maker may be obliged to give up the instrument to the true owner, and may be sued either upon it or upon the consideration.

Where a forged addition has been made to the sum for which a bill, note, or cheque was really made payable, a banker paying the whole cannot charge his customer for more than the original sum.

Nor would the acceptor or maker, if he had paid it, be able to take credit for it in his account with the drawer or payee.

But if the banker's customer gave occasion to the forgery by his own negligence, as by drawing a cheque for fifty pounds and leaving room for the words "*three hundred*" to be placed before the fifty, then the banker on paying the cheque *bona fide*, may take credit for the payment.

In the same way, an acceptor of a bill is not to be the loser, if he accept and afterwards pay a bill, so rendered capable of alteration by the negligence of the drawer.

It has already been seen (see chap. iv, sec. 10,) that even when a bill or note is *sold*, (as when it is given on the purchase of goods at the time of such purchase,) there is an implied warranty that all the signatures are genuine.

5. There is also an important principle of law that money paid under mistake of *fact* may be recovered back, though it is otherwise as to money paid under a mistake of *law*. This principle regulates the dealings with forged instruments.

Suppose money to be paid in consideration of a bill of exchange being indorsed to the person paying the money; *i. e.* suppose the bill to be discounted, the transferee may recover back the money on discovering the forgery, if, as would usually be the case, he were guilty of no negligence, and believed the signatures to be genuine.

So also if, though there be some negligence on the part of the person paying, yet he be thrown off his guard by an assertion or implied assertion on the part of the person who requests him to pay, the money may be recovered back, at all events if notice of the forgery were given to the holder in time for him to give notice of dishonor to the other parties.

6. Any person who, by any false pretence, obtains the signature of any other person to any bill, note, or valuable security, with intent to cheat or defraud, is guilty of a misdemeanor, and liable to penal servitude for four years, or to either fine or imprisonment, or both.

---

## CHAPTER XVII.

### OF THE STATUTE OF LIMITATIONS.

1. *Actions must be brought within six years.*
2. *Exceptions in favor of persons under disability.*
3. *The Statute must be pleaded.—Form of Notice in the County Court.*

4. From *when, under various circumstances, the six years is counted.*
5. *To when it is counted.*
6. *How to prevent the operation of the Statute.*
7. *Acknowledgments and payments may give another six years in which to sue.*
8. *Effect and requisites of such acknowledgments.*
9. *Effect and requisites of such payments.*
10. *Acknowledgments may be made to a stranger.*
11. *Hints for securing proof of the payments above mentioned*
12. *Note twenty years old.*

1. By a statute passed in the 21st year of King James the First, and the modifications introduced by an act of the 19th and 20th year of the present reign, all actions on simple contracts (*i. e.* not founded on instruments under seal), which, of course, include those on bills, notes, cheques, &c., must be commenced within six years after the right to bring the action accrued.

2. To this there are exceptions in favor of plaintiffs who, at the time of the accrual of the cause of action (*i. e.* the right to sue), are under disabilities, as infants, married women, or persons of unsound mind, who have six years, after the cessation of these disabilities, within which they may bring their action.

There is no longer an exception in favor of persons absent abroad.

Thus, an infant has six years after coming of age; a married woman, six years after the termination of the marriage by death or divorce; and a lunatic, six years after becoming of sound mind.

3. The Statute must be *pleaded* by the defendant, if he wishes to take advantage of it, and he will then allege in his plea that the cause of action on which the plaintiff is suing did not accrue within six years, and if this is made to appear from the evidence adduced by either party, the plaintiff's remedy is barred.

In the County Court, where a defendant intends to rely on the Statute of Limitations for his defence, he must give notice thereof, in writing, to the Registrar of the Court, at least five *clear* days before the day when the defendant is ordered by the summons to attend in court.

The notice may be in the following form:—



In the County Court of Warwickshire, holden at ———.

Between A. B., Plaintiff, and C. D., Defendant.

Take Notice, that at the hearing, I shall rely on the following ground of defence:

That the claim for which I am summoned is barred by a Statute of Limitations.

Dated this                      day of                      1858.

(Signed)

C. D., Defendant.

To the Registrar of the Court.

4. The time is counted, or, in legal language, the Statute *begins to run* on bills or notes from the first day that an action could be brought upon them.

On a bill or note, payable a certain time after date, the action can be first brought on the day of dishonor.

The action on a bill accepted, payable on a certain event, as the paying off of a Queen's ship, &c., can be first brought on the happening of the event on which the instrument was payable.

If a note is payable by instalments, but upon any default then the whole to be due, the action can then be brought upon the first default.

But, if the administrator of a party to a bill or note have not taken out letters of administration till after the bill or note became due, then the six years will only count against the administrator from the time of his taking out letters of administration.

If a bill or note is payable at, or a certain time after sight, no action can be commenced until presentment, or exhibition to the maker.

But, if the instrument be payable "on demand," (no demand being necessary to entitle a person to sue, *i. e.* the action being itself a sufficient demand,) the six years will count from the date of the bill.

If an accommodation acceptor, having paid the bill, is suing the drawer, the plaintiff can sue within six years from the time of paying the money.

If acceptance of a bill be refused, and afterwards at maturity it be not paid, the six years counts from the refusal to accept.

If the Statute have run out against the holder of a bill or note, his transferee is in no better position.

5. The six years, in order to operate as a bar, must have expired before the commencement of the action, *i. e.* in the Superior Courts before the issuing of the writ, and in the County Courts before entering the plaint.

6. The operation of the Statute can be effectually pre-

vented by issuing a writ from the Superior Courts, and getting it renewed *every six months* by having it stamped anew with the seal of the Court.

In the County Court, for the same purpose, successive summonses may be issued without leave of the Court, the first and each successive summons remaining in force for *twelve months*, and no fee being required for the subsequent summonses, nor any service of either the original or subsequent summonses.

7. Certain acknowledgments and payments have the effect of taking the case out of the Statute (*i. e.* preventing its operation), and give the plaintiff another six years within which to sue, counting from the date of such acknowledgment or payment, and they have this effect whether made *before* or at any time *after* six years from the accrual of the original debt.

8. These acknowledgments must be in writing, and signed by the party whom it is sought to make liable (*i. e.* the defendant), or by some person authorized by him.

A clerk, a wife, or an infant, may be an agent for this purpose.

In case of persons liable jointly, or jointly and severally, as drawers, acceptors, makers, &c., no acknowledgment or payment will bind any one but the person making it, unless, of course, it were made with the authority of the person liable jointly with him, as it would often be in the case of ordinary partnerships, when the acknowledgment was signed or the money paid in the name or on behalf of the firm.

No acknowledgment need be stamped, unless it amounts to a promissory note, an agreement, or a deed. (See chap. xxii.)

A simple acknowledgment of a sum due is presumed to mean a promise to pay, though it may be written, as often happens in correspondence, without any such intention; but, of course, the promise of payment must not be repelled by any expressions in the acknowledgment.

If the acknowledgment do not state expressly or point out by reference, some particular sum, as by referring to a bill or note, or the balance due upon it, &c., the sum due may be supplied by verbal evidence.

If the acknowledgment contain no date, the person receiving it should preserve the date in his memory, by making a memorandum on the back, which is not, however, in itself evidence.

9. A payment, in order to take a case out of the Statute, should appear to be part payment of a larger sum, of which a portion remains due, and to be made on account of the debt sued for.

A devise, or bequest for the payment of the debt due to a *specified* creditor, will take the debt out of the operation of the Statute.

An executor is not bound, except by an express promise.

Where a debtor owes some debts which are barred, and some which are not, and makes a general unappropriated payment, such payment will not take the barred debts out of the Statute, unless the creditor, by notice, appropriates the payment; (as to which, see chap. x.)

Giving a bill or note may amount to payment or acknowledgment. Goods treated as money are a sufficient payment. When on one or both sides of an account there are items which are barred by the Statute, and a settlement of the account takes place and a balance is struck, the process of forming a balance by both parties is regarded as a mutual payment, and takes the case out of the Statute, as regards the balance, which may, therefore, be sued for by the person in whose favor it stands.

10. The acknowledgment need not be made to the plaintiff, nor, indeed, to any party to the bill or note. Thus, a letter from one joint acceptor to his co-acceptor, or a deed between a party to the bill and a stranger, reciting that the bill is outstanding and unpaid, may amount to an acknowledgment against the persons writing the letter, or executing the deed respectively.

11. Payment may be proved like any other fact. An entry or memorandum, or a statement made by the party paying, will be good evidence against him by way of admission in proof of such payment.

But, no entry of part payment made on a bill or note, by the party receiving the money, will be evidence of such payment, so as to prevent the Statute from running.

Mr. Justice Byles, in his work on bills, advises that the debtor should write the memorandum of part payment, whether of principal or interest, on the back of the bill or note, and that he and the creditor should both sign it, and thus the rights of both will be protected.

Payment of interest takes the principal out of the Statute, and part payment of principal (in the case of bills and notes) has the same effect upon interest.

12. Independently of the Statute, there is a presump-

tion that a note twenty years old (not being a bank-note) is paid.

## CHAPTER XVIII.

### OF SET-OFF.

1. *Of the right to set-off debts.*
2. *General requisites of debts which are to be set-off.*
3. *Mutuality of such debts.*
4. *Position of surviving partner as to set-off.*
5. *Joint and several debtor sued alone for his joint and several debt.*
6. *Husband's right of set-off when sued for his wife's debt.*
7. *In Bankruptcy.*

1. A defendant sued for a liquidated money demand, is permitted, but not obliged by law, to set-off against the sum which plaintiff claims, any liquidated money demand due from the plaintiff to the defendant.

2. Both the plaintiff's claim, and the defendant's set-off, must be liquidated money demands.

The defendant's set-off may be of a less or a greater amount than the plaintiff's claim.

Instead of pleading a set-off, the defendant may, if he likes, bring a cross-action, or he may do both, but if he is successful on the plea in the original action, the judgment in the cross-action, if in his favour, will be proportionally reduced.

One judgment may be set-off against another.

The debt to be set-off must be one recoverable in a Court of Law, without the help of a Court of Equity.

It must be a subsisting legal debt, and not one the remedy for which is barred by the Statute of Limitations, or one which is satisfied by the discharge of the debtor out of custody.

The debt must have been due at the commencement of the action, and must remain due at the time of trial.

A bill or note, for example, to be set-off, must have been due and unpaid in the defendant's hands when the action was commenced, and must remain in his hands at the trial.

3. The debts must be mutual—that is, they must be due to the defendant or defendants alone, from the plaintiff or plaintiffs alone.

[But it is not meant that the defendant must be unable

to sue any one else than the plaintiff; for, on a bill, for instance, there might be several others who could be sued. Defendant may set off a sum due on plaintiff's *joint and several* note against plaintiff's demand.]

For example, if A and B sue D, D can set-off a debt due to him from A and B, but not one due to him from A alone, or one due from A, B and C.

So also if the debt were due from A and B, not to D alone, but to D and E, then the debt could not be set-off by D.

4. But the debts and credits of a firm are vested at law in the surviving partner, who is then in the same position as regards set-off as if the other parties had never existed.

For example in the above case, suppose D and E were partners, and E were dead, D, though the sole defendant, and sued for his private debt, might set-off a sum due by A and B, the plaintiffs, to the firm of D and E. And the reason of this is to save the trouble of cross-actions; for though the debt did not originally accrue to D alone, yet D is now the only person who could sue for it.

5. If A sue B alone, B may plead that the money is owed by him, together with C, and that a set-off is due from A to B and C.

6. With regard to the set-off which a husband may plead, and to which he is liable in right of his wife, the following extract is given from "Byles on Bills:—"—

"If a note be given to a married woman, the husband may either sue alone, or join his wife. If he sue in his own name, he is not liable to a set-off due from his wife before marriage, but he is to a set-off due from himself. If he join her, it should seem he is liable to a set-off due from his wife, but he is not to one due from himself."

7. In bankruptcy, all claims, whether for debt or for damages, may be set-off, however late they were contracted, if contracted without notice of a specific act of bankruptcy.

The debtor claiming the set-off may either go into the matter before the Commissioner, or bring a separate action against the assignees.

---

## CHAPTER XIX.

### OF THE FORMS OF BILLS AND NOTES.

1. *Distinctions between joint and joint and several notes.*
2. *Bills always joint.*
3. *No precise form necessary for bills or notes.*
4. *Other matter may be contained in bills and notes without invalidating them.*
5. *Note may be payable to maker or order.*
6. *Bill and notes under 20 shillings.*
7. *Certain matters of form which are convenient, but not essential.*
8. *Bills must be drawn payable at all events and unconditionally.*
9. *Amount in figures at top of bill, how far of use—written words conclusive as to amount.*
10. *Time of payment—on demand—after sight.*
11. *Payee should be carefully described, and why.*
12. *Miscellaneous matters.*

1. Where two or more persons, not being partners, join in making a promissory note, it may either be a *joint* or a *joint and several* note. It is called joint when the words used express only one promise, though made by more than one person, as "*We promise to pay, &c.*"; and it is called joint and several when, in addition to the joint promise of the two makers, the words express a separate or several promise of *each* maker, as "*We and each of us,*" or "*We jointly and severally* promise to pay, &c."

The first mentioned form is far preferable because, on a joint and several note, both makers may be sued together, or either separately, but upon a joint note, there being but one promise, both joint makers *must* be sued together, if the action is brought in the Superior Court, and a discharge of one is a discharge of the other (chap. xii, 8). In the County Court, however, either may be sued separately, or both may be sued, and only one served with process: then the one against whom judgment is given may recover contribution against his fellow.

2. Bills are always joint, and not several, being always directed to the drawees jointly and accepted jointly; but if a bill be accepted in the name of a firm, as "*B. D. & Co.*" (and not jointly by each partner, as "*A B, C D*"), either partner may be sued without the other. (As to execution, see chap. xx, sec. 4.)

3 No precise form of words is necessary to constitute

a promissory note, but any language importing a distinct promise to pay at all events is sufficient, as "I undertake to *account* to A B or order for £50."

If there be no words amounting to a promise, the instrument is merely an I O U, or in some cases an agreement.

A bill should contain a distinct order to pay, and a note a distinct promise to pay, but no particular form is necessary in either.

Where a promissory note was in the words "I promise *never* to pay," the word *never* was struck out as being fraudulently inserted.

4. Other words may be contained in a note without invalidating it, as, for instance, a recital that deeds have been deposited by way of security for the payment of the money.

5. A man may make a note payable to himself or order, and indorse it, but he cannot make a note to himself and another man.

6. Though bills and notes are usually written in certain established forms (see Appendix), it may yet be as well to lay down a few rules by way of enabling the reader to distinguish between a mere irregularity and a fatal error or omission.

Bills and notes for less than 20 shillings are forbidden under a penalty, and are void.

7. It is usual and proper, but not strictly necessary, to write at the top of a bill or note the name of the place where it is made.

With the exceptions above mentioned, a date, though usual and proper, is not strictly necessary; but if the bill be payable a certain time after date, time will count from the day of the drawing or making, of which the payee should make a memorandum on the back to assist his memory, if the date be omitted.

8. It may here be stated that it is essential that a bill or note should be drawn payable, either at some fixed date, or on the happening of an event which is certain to happen, as on the paying off of a Queen's ship.

And now that acceptances must be in writing, any condition on which the acceptor's liability is to depend must be in writing also, as "Accepted, payable on giving up bill of lading for 76 bags of cotton per ship R."

9. It is usual and proper to write in the body of a bill

or note in words, at full length, the sum for which the instrument is payable, thereby guarding against any mistake or alteration. It is also the practice to write at the top or bottom of the bill the same sum in figures; this is meant merely to assist the eye, but may nevertheless be useful to supply an accidental omission in the body of the instrument, as if the word *pounds* be omitted by mistake.

But in case there be any difference between the sum stated in figures and the written sum, the latter will *always* be considered as the sum contracted for; and a banker at whose house the instrument is payable will not be justified in paying attention to the figures.

10. The *time* of payment is usually stated both in bills and notes. An instrument which is silent on this point will be payable on demand. It has already been stated (see chap. vi, sec. 5) that the words after sight mean after sight testified by acceptance, *i. e.* after acceptance, and if acceptance of such a bill be refused, it is dishonored; but a *note*, being incapable of acceptance, it is, when payable after sight, to be *rarely exhibited* to the maker. As to days of grace, see chap. viii, sec. 6.

11. In promissory notes, and bills not payable to drawer or his order, but to a third party as payee, the payee should be particularly described. But if the instrument gets into the hands of a wrong payee, he can neither sue, nor confer a title by transfer or indorsement. The payee need not necessarily be described by his name, but he may be described by his office, as "the master of the ship B," or "the trustee under A's will."

Where there is any doubt about the name, or where the name is common, it may be well to add the designation of the payee's occupation; and the word *junior* should be used to distinguish him from his elder relatives.

A person meant by the drawer to be the payee may fill up with his own name a blank left for the payee's name.

12. The words *value received* are not essential. The consideration may be stated in any other way or omitted altogether, but an *alteration* in the statement of the consideration will be such a material change as will invalidate the instrument for want of a new stamp. (See chap. xiv.)

A bill should be properly directed to the drawer, but when he has once accepted it he cannot object to a mistake in the direction. But a bill cannot be addressed to one man, and accepted by another, except for honor. (See chap. vi, sec. 8.)



A bill, though accepted, is of no use without the drawer's signature. A note may be signed by the maker in the body of the instrument, as "I, A B, promise to pay, &c."

If any place of payment is stated in the *body* of a note, it is payable there only. As to the place where bills are made payable, whether in the body or the acceptance, see chapters i and vi.

Where the drawee is directed to pay *as per advice* or according to advice, it is not safe to pay without.

A promissory note must not be expressed to be payable out of a particular fund; but a fund may be mentioned in a bill, merely by way of direction to the drawee how to reimburse himself.

Indorsements, though properly made on the back of bills and notes, are not invalid if made on the face.

Instruments defective, as bills or notes, may still be evidence of agreements, in which case, if over £20, they will generally require a stamp of 2s. 6d., which can be affixed after they are written.

A note beginning "I promise," and signed by more than one, is several as well as joint. (See sec. 1.)

It is no answer to an action on a *joint and several* promissory note, that one of the plaintiffs is one of the makers.

## CHAPTER XX.

### OF ACTIONS ON BILLS, CHEQUES, AND NOTES.

1. *Whether to sue in the Superior or County Courts.*
2. *Great facilities now offered in both these Courts.*
3. *Remedy on lost bills or notes.*
4. *Who must be sued? and of execution.*

1. Where it is desired to put the law in force to obtain payment of bills, cheques, or notes, the holder or his adviser must consider the expediency of choosing between the Superior Courts and the County Court, where the amount demanded is within the jurisdiction of the latter Courts.

If the amount sued for is within £50, or is, by relinquishing a portion, reduced to that amount, the action may be brought in the County Court. But wherever it is over £20 the defendant may remove it into the Superior Court. Wherever it is *not over* £20 the judge of the County Court has power, without consent, to order the amount to be paid by instalments, which often detracts considerably from the value of the remedy in these Courts.

2. The security afforded by bills, cheques, and notes, is considerably enhanced by virtue of a recent Act, which enables a plaintiff suing upon a bill or note, *within six months after it falls due*, to obtain a writ, which warns the defendant to get leave to appear and defend the action within twelve days, and states that unless such leave is obtained the plaintiff will have judgment and execution. This Act is extended to the County Courts.

The only way to obtain such leave is by paying the money into Court or by swearing an affidavit disclosing a defence upon the merits.

The plaintiff has still the option of adhering to the more dilatory remedy afforded by the ordinary action at law.

3. An action may be brought either in the Superior or County Courts, on lost bills or notes, upon giving an indemnity to the satisfaction of the Court.

4. Where two or more persons are sued, whether partners or not, (as to which see chap. xix, secs. 1 and 2,) execution may be levied on the property of either or both. But if only one of two or more partners is sued, all that can be taken under an execution will be his separate property, or his share of the partnership property.

---

## CHAPTER XXI.

### ON CHEQUES.

1. *General resemblance between Cheques and Bills.*
2. *Under Twenty Shillings Void.*
3. *Bankers' Obligation to Pay.*
4. *To be presented within reasonable time, and why.*
5. *How far a Cheque is Payment.—Proof of Payment thereby.—Tender of Cheque.*
6. *When evidence of an existing Debt.*
7. *Paying Bill by Cheque.*
8. *Drawer's Death.—Forged Cheque.*
9. *Cheque drawn by Partners,—and by several persons not Partners.*
10. *Crossing Cheques ; why, and how to be done.*
11. *Of the Rights of the Drawer, Holder, and Banker, as to a crossed Cheque.*
12. *Of the Stamp.*

1. A cheque on a banker, being simply an order to the banker to pay money to the bearer, is an inland Bill of Exchange, payable to bearer on demand, and, for this rea-

son, requires no acceptance. The person signing the cheque is called the drawer. A cheque is, in general, subject to the rules which regulate the rights and liabilities of parties to Bills of Exchange.

2. A cheque for less than twenty shillings is no longer void or forbidden under a penalty; but such cheques are lawful, provided they are payable to bearer or to order on demand, and are drawn on a banker who shall *bona fide* hold money to the drawer's use.

3. A banker is obliged to pay cheques drawn on him by his customer, if he has money of the customer's sufficient to meet the cheque. But he would, probably, not be liable for refusing to pay a cheque, if his customer's money had only been paid in a few minutes before the cheque was presented.

4. A cheque, like a bill, must be presented within a reasonable time, which generally includes the day after it is issued. All that is meant by this is, not that the drawer is always discharged, by failure to present within the time mentioned, but that if he be prejudiced by the delay (as if the banker fail), he will *then* be discharged. In fact, by keeping the cheque too long, the *holder* runs the risk of the bank failing.

The drawer is, in *this* sense, entitled to have the cheque presented within the time above mentioned, though the payee give it to his banker for presentment, or circulate it through several hands.

5. A cheque, unless dishonored, is payment; *i. e.*, a man having taken a cheque for his debt, cannot sue for the debt till he has presented the cheque, and payment has been refused.

To prove that a debt has been paid by means of a cheque, the banker must be called to prove that he paid it, and it must be shown to have passed through the hand of the creditor. For this reason, when a debt is paid by cheque, the person to whom it is paid should be requested to write his name on the back.

A person who has tendered a cheque in payment of a debt is in the same position as if he had tendered money unless the tender was objected to *on the ground* of its being a cheque.

6. The mere possession by A of an unpresented cheque drawn by B is no evidence of a debt due from B to A.

But if the cheque has been presented and payment refused, it would be otherwise.

7. When an offer is made to pay a bill by a cheque, if the holder gives up the bill before cashing the cheque, he may be considered to rely entirely on the cheque, and then he would lose his remedy on the bill, if the cheque were dishonored.

8. A banker must not pay a cheque after the drawer's death, unless the banker be ignorant of the death, in which case he is justified in paying.

If a banker pays a forged cheque, the loss is his own, for he can only charge *his customer* with money paid upon *his* cheques, and the forged cheque is the cheque of a stranger; but the mere fact of an *indorsement* being a forgery does not throw the loss on the banker if ignorant of the forgery.

If the cheque be *in part* forged, the rule is the same; unless the customer, by his carelessness in drawing the cheque, have given opportunity for the forgery. (See chap. xvi, sec. 4.)

9. Each partner may draw cheques in the name of the firm; and, until the firm is dissolved, the banker is bound to pay such cheques, unless he have notice of a contract between the partners restricting the right to draw cheques.

The holder, if *bona fide* and for value, will have a right of action against the firm on the cheque, if dishonored, although wrongfully drawn by one partner.

Where several persons, having a joint account, but not constituting a firm, draw a cheque, they must all sign, unless one has authority to sign for the others; and if one has absconded, the Court of Chancery must be applied to. The same if the executor or administrator of one of them refuses to sign.

11. Cheques being payable to bearer on demand, it is very desirable when they are sent by post, and on other occasions, to take precautions against their falling into the hands of persons for whom they are not intended, who may present and obtain cash for them.

This can, in general, be effectually done by writing across them the name of a banker, or, between two transverse lines, the words "and Company," or "and Co." These words should be distinctly written across the face of the cheque. The cheque may be crossed in either of these ways by the drawer or by any subsequent lawful holder who receives it uncrossed; and if, when the latter receives it, it is only crossed "and Company," or "and Co.," he

may insert the name of any banker to or through whom it wishes the cheque to be paid; and this will have the same effect as if the crossing had been written by the drawer.

The effect of crossing the cheque will be, that the banker on whom it is drawn will not be justified in paying it except to *another banker*; and if he does so, he not only cannot take credit for it, but is liable to an action by his customer, if the wrong person gets the money. If the cheque is crossed with the name of a particular banker, it can only be paid to or through that banker.

Thus, the original bearer or holder of the cheque, cannot obtain cash for it, except through his banker, or his friend's banker.

If the crossing be so erased by some dishonest person that the cheque may, without negligence, pass for an uncrossed one, the banker is justified in cashing the cheque if he has not noticed the crossing, and the loss must be borne by the customer. The question of the banker's negligence is, of course, for a jury.

A dishonest erasure of the crossing is a forgery. (See chap. xvi.)

The word *banker* of course includes any banking company.

12. By "The Stamp Act, 1870," all drafts or orders which entitle or purport to entitle any person, *whether named therein or not*, to payment by any other person of any sum of money therein mentioned, or to draw upon any person for such sum of money, must bear a penny stamp, either adhesive or impressed.

Thus, whether the cheque is drawn upon a banker or not, and whether payable to "Self," or to a number, or to the bearer, or to a person named or bearer, or to a person named or order—in fact, whatever form it may assume, it will require the stamp if the person on whom it is drawn is authorised to pay money upon it.

A few exceptions, however, relating chiefly to orders drawn by bankers themselves, and by public officers, will be found in the Appendix on Stamps.

The person affixing an adhesive stamp must cancel it by writing on or across it his name or initials, or the name or initials of his firm, together with the true date of his so writing; otherwise, if the cheque is produced in evidence, proof must be given that the stamp appearing thereon was affixed at the proper time.

## CHAPTER XXII.

## OF AN I O U.

1. *What it is, and general form.*
2. *Not Negotiable, being merely evidence of Debt.*
3. *Caution as to Stamp.*
4. *Should contain Creditor's Name.*

1. A mere acknowledgment of a debt does not amount to a promissory note.

Such an acknowledgment is frequently made in an abbreviated form, thus:—

*London, 1st January, 1858.*

To Mr. A. B.

I O U one hundred pounds.

C. D.

An acknowledgment in this form is called an I O U, and is evidence that at the time when it was made, there was a balance of accounts in favour of the party to whom it was given, and for the amount specified.

2. Being merely evidence of the existence of debt, it requires no stamp. It is neither a promissory note nor a receipt, but, except that it cannot be negotiated and circulated, it has all the effect of a promissory note payable on demand; for a debt is acknowledged to be due, and may be sued for at any time.

3. It is always desirable to adhere strictly to the above form, for, if words be added expressing a promise to pay the amount on a particular day, the instrument would then be a promissory note, and could not be given in evidence without a stamp. Again, the addition of certain other words might make the document amount to an agreement, in which case, if over £20, it would require a stamp. In this case, however, there is less danger, for an agreement may be stamped after it is written, or even at the trial, on payment of a fine, but a promissory note cannot.

4. If the name of the person to whom it is addressed, does not appear on the I O U, it will, *prima facie*, be taken as evidence of a debt due to the person who produces it; but this the defendant may, of course, rebut.

To avoid difficulties, the creditor's name should always be mentioned, as in the form given above.

# APPENDIX.

## FORMS.

A short statement of the legal effect of the several forms is made, for the reader's convenience, to accompany this chapter; but, for fuller information, those parts of the work, which treat of the subjects in question, should be perused.

### BILLS.

£100 Os. 0d.

*Bristol, May 15th, 1858.*

Six months after date pay to me or my order the sum of One Hundred pounds, value received.

To Mr. Roger Thorpe,  
Mercer,  
No. 1, Bucklersbury, London.

GEORFFREY STILES.

Accepted,  
Roger Thorpe.

This bill is without indorsement, payable only to Geoffrey Stiles, the payee, who is also the drawer. When indorsed in blank by him, (*i. e.*, by simply writing his name on the back,) it becomes payable to bearer, but *may* be indorsed by any number of other persons through whose hands it circulates.

£100 Os. 0d.

*London, May 16th, 1858.*

Six months after date order, the sum of One Hundred pounds, value received.

To Mr. Effingham Wilson,  
Royal Exchange.

WALTER SMITH.

Accepted,  
Payable at  
Messrs. Drummonds.  
Effingham Wilson.

This bill is, without indorsement, payable only to Oliver Kempe, the payee. When indorsed in blank by

him it becomes payable to bearer, but may be indorsed by any number of persons through whose hands it circulates.

[With regard to special indorsements, converting blank into special indorsements, so as to avoid liability, and other matters connected with indorsements, see chapter iv, on "Transfers."]

If the words "*or my order*," and "*or order*," were omitted in the above bills, they would be payable only to Geoffrey Stiles and Oliver Kempe respectively. The words "*or bearer*" may be used instead of the above, and then the bill will be payable to whoever presents it.

Instead of the word "*date*," the word "*sight*" may be inserted, and then the bill will be payable six months after acceptance, and in that case a date should be appended to the acceptance. (See chap. vi, sec. 5.)

In the latter example above given, the words "*payable at Messrs. Drummonds*," still leave the acceptance a general one, and, in order merely to charge the acceptor, the holder is not bound to present the bill anywhere; but to charge the drawer and indorsers, it must have been presented at the bank named.

But if the words "*payable at Messrs. Drummonds, and there only*," had followed the signature, the acceptance would be special, and the bill must be presented at the place named, even for the purpose of charging the acceptor.

[For further information, see chap. vi, on "Acceptance."]

£100 Os. 0d.

London, May 17th, 1858.

On demand, pay to me or my order, [or to A B or his order] the sum of One Hundred pounds, value received.

RICHARD CROMWELL.

To Mr. Henry Moore,  
No. 2, Fleet Street.

This bill needs no acceptance, but resembles in other respects the bills above mentioned.

#### PROMISSORY NOTES.

£50 Os. 0d.

London, May 18th, 1858.

On demand, I promise to pay [at Messrs. Drummonds', Charing Cross] to Humphrey Reed, or his order, Fifty pounds, value received.

THOMAS MORE.



This note is payable generally, and may be presented anywhere, the same as if words in brackets were omitted, but to charge the indorsers, it must have been presented at the place named. But if, to the words in brackets there were added the words "*and there only*," the note must be presented at the place named, even for the purpose of charging the maker. The place where payable is sometimes written across like an acceptance.

Instead of *on demand*, the bill may be made payable so many days, weeks, or months after *date*, or after *sight*. After *sight*, in case of notes, means merely after *exhibition* to the maker.

---

#### JOINT AND SEVERAL PROMISSORY NOTE.

£50 0s. 0d.

London, May 19th, 1858.

Two months after date, we and each of us, [or we *jointly* and *severally*] promise to pay to William Shakespere, or order, the sum of Fifty pounds, value received.

HUGH OLDHAM.  
ARTHUR SMITH.

By omitting the words in the above form between "*we*" and "*promise*" the note may be made a joint note; but such a form would be found very inconvenient. (See chap. xix, sec. 1.)

A note beginning "*I promise*," and signed by more than one person, is several as well as joint. (See chap. xix, sec. 1.)

The words "*or order*," as in the case of bills, render indorsement necessary. Those words will be omitted with the same effect as in bills. Like bills, notes may be payable to bearer.

## STAMPS.

The stamp duties at present payable on inland bills, cheques, and promissory notes, by virtue of "The Stamp Act, 1870," are as follows :

*Bill of exchange, draft, order, cheque, letter of credit*, and any document or writing (except a bank note) entitling or purporting to entitle any person, whether named therein or not, to payment by any other of, or to draw upon any other person for, any sum of money therein mentioned, *payable on demand* . . . . .

s. d.  
0 1

*Bill of exchange of any other kind whatsoever* (except a bank note), and *promissory note* of any kind whatsoever (except a bank note) drawn, or expressed to be payable, or actually paid, or endorsed, or in any manner negotiated in the United Kingdom—

Where the amount or value of the money for which the bill is drawn or made does not exceed . . . . . £5

. 0 1

Exceeds £5 and does not exceed . . . . . 10

. 0 2

" 10 . . . . . 25

. 0 3

" 25 . . . . . 50

. 0 6

" 50 . . . . . 75

. 0 9

" 75 . . . . . 100

. 1 0

For every £100, and also for every fractional part of £100, of such amount or value . . . . .

1 0

<i>Bank note—</i>			<i>s.</i>	<i>d.</i>
For money not exceeding	£1	.	0	5
Exceeding £1 and not exceeding	2	.	0	10
" 2	5	.	1	3
" 5	10	.	1	9
" 10	20	.	2	0
" 20	30	.	3	0
" 30	50	.	5	0
" 50	100	.	8	6

These notes can only be issued by licensed bankers, who may re-issue them after payment as often as they please. These duties do not apply to Bank of England notes. See Schedule to Act of 1870.

---

**THE FOLLOWING ARE EXEMPT FROM STAMP DUTY.**

---

Drafts or orders drawn by any banker in the United Kingdom upon another banker in the United Kingdom not payable to bearer or to order, and used solely for settling accounts between them.

Letter written by one such banker to another such banker directing the payment of a sum of money, but not delivered to the person to whom payment is to be made, or to any one on his behalf, and not payable to bearer or to order.

Letter of credit granted in the United Kingdom authorising drafts to be drawn out of the United Kingdom payable in the United Kingdom.

Bank of England notes; orders of the Accountant-General of the Court of Chancery in England or Ireland; warrants for payment of annuities granted by the Commissioners for the Reduction of the National Debt, or for any dividend or interest on Parliamentary Stocks or Funds; bills by the Lords of the Admiralty on the Accountant-General of the Navy; bills drawn for payment of Army pay or allowances from any public account; coupons attached to any security.

# CROSSED CHEQUES ACT.

## CHAPTER 81.

**An Act for amending the Law relating to Crossed Cheques.**  
[15th August, 1876.]

**A.D 1876.**

Be it enacted by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows :

1. This Act may be cited as The Crossed Cheques Act, 1876. **Short title.**  
2. The Acts described in the schedule to this Act are hereby repealed, but this repeal shall not affect any right, interest, or liability acquired or accrued before the passing of this Act. **Repeal of Acts in schedule.**

3. In this Act—

“Cheque” means a draft or order on a banker payable to bearer, or to order on demand, and includes a warrant for payment of dividend on stock sent by post by the Governor and Company of the Bank of England or of Ireland, under the authority of any Act of Parliament for the time being in force :

**Interpretation.**

“Banker” includes persons or a corporation or company acting as bankers.

4. Where a cheque bears across its face an addition of the words “and company,” or any abbreviation thereof, between two parallel transverse lines, or of two parallel transverse lines simply, and either with or without the words “not negotiable,” that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed generally.

**General and special crossings.**

Where a cheque bears across its face an addition of the name of a banker, either with or without the words “not negotiable,” that addition shall be deemed a crossing, and the cheque shall be deemed to be crossed specially, and to be crossed to that banker.

5. Where a cheque is uncrossed, a lawful holder may cross it generally or specially.

**Crossing after issue.**

Where a cheque is crossed generally, a lawful holder may cross it specially.

Where a cheque is crossed generally or specially, a lawful holder may add the words “not negotiable.”

Where a cheque is crossed specially, the banker to whom it is crossed may again cross it specially to another banker, his agent for collection.

6. A crossing authorised by this Act shall be deemed a material part of the cheque, and it shall not be lawful for any person to obliterate or, except as authorised by this Act, to add to or alter the crossing.

**Crossing material part of cheque.**

7. Where a cheque is crossed generally, the banker on whom it is drawn shall not pay it otherwise than to a banker.

**Payment to banker only.**

Where a cheque is crossed specially, the banker on whom it is drawn shall not pay it otherwise than to the banker to whom it is crossed, or to his agent for collection.

Cheque crossed specially more than once not to be paid.

Protection of banker and drawer where cheque crossed specially.

Banker paying cheque contrary to provisions of Act to be liable to lawful owner. Relief of banker from responsibility in some cases.

Title of holder of cheque crossed specially.

8. Where a cheque is crossed specially to more than one banker, except when crossed to an agent for the purpose of collection, the banker on whom it is drawn shall refuse payment thereof.

9. Where the banker on whom a crossed cheque is drawn has in good faith and without negligence paid such cheque, if crossed generally to a banker, and if crossed specially to the banker to whom it is crossed, or his agent for collection being a banker, the banker paying the cheque and (in case such cheque has come to the hands of the payee) the drawer thereof shall respectively be entitled to the same rights, and be placed in the same position, in all respects, as they would respectively have been entitled to and have been placed in if the amount of the cheque had been paid to and received by the true owner thereof.

10. Any banker paying a cheque crossed generally otherwise than to a banker, or a cheque crossed specially otherwise than to the banker to whom the same shall be crossed, or his agent for collection being a banker, shall be liable to the true owner of the cheque for any loss he may sustain owing to the cheque having been so paid.

11. Where a cheque is presented for payment, which does not at the time of presentation appear to be crossed, or to have had a crossing which has been obliterated, or to have been added to or altered otherwise than as authorised by this Act, a banker paying the cheque, in good faith and without negligence, shall not be responsible or incur any liability, nor shall the payment be questioned, by reason of the cheque having been crossed, or of the crossing having been obliterated, or having been added to or altered otherwise than as authorised by this Act, and of payment being made otherwise than to a banker or the banker to whom the cheque is or was crossed, or to his agent for collection being a banker (as the case may be).

12. A person taking a cheque crossed generally or specially, bearing in either case the words "not negotiable," shall not have and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had.

But a banker who has in good faith and without negligence received payment for a customer of a cheque crossed generally or specially to himself shall not, in case the title to the cheque proves defective, incur any liability to the true owner of the cheque by reason only of having received such payment.

## SCHEDULE.

### ACTS REPEALED.

- 19 & 20 Vict. c. 25. - An Act to amend the law relating to drafts on bankers.  
21 & 22 Vict. c. 79. - An Act to amend the law relating to cheques or drafts on bankers.

# INDEX.

## A.

	PAGE
Acceptance, meaning and nature of . . . . .	35
" general . . . . .	35
" special . . . . .	35
" qualified . . . . .	35
" when a bill may be accepted . . . . .	36
" what may be treated as a refusal to accept . . . . .	36
" for honour of drawer . . . . .	36
" what is admitted by it . . . . .	36
" always desirable to present bills for . . . . .	38
" notice of refusal of . . . . .	38
Acceptor of a bill always liable . . . . .	7
" " how he may be discharged . . . . .	37
" to whom he may pay . . . . .	42
Accommodation bills, how far no consideration may be a defence . . . . .	17
Actions on bills of exchange must be brought within six years . . . . .	64
Agency, limited and general . . . . .	11
Agent, how he can bind principal and himself . . . . .	12
Agents, how appointed . . . . .	9
Authority to act is either real or presumptive . . . . .	10

## B.

Bank note is a banker's promissory note . . . . .	6
Bankers must pay cheques if in sufficient funds . . . . .	75
" paying forged cheques suffer the loss . . . . .	76
Bill or note payable on demand . . . . .	43
Bills of exchange, names and relations of parties thereto . . . . .	5
" how to be drawn . . . . .	6
" who are incompetent to be parties thereto . . . . .	9
" payable to order and to bearer . . . . .	25
" if indorsements blank or special . . . . .	26
" how they may be indorsed without incurring liability . . . . .	27
" who must accept . . . . .	37
" presentment for payment, how to be made . . . . .	39
" how excused . . . . .	39
" where to be made . . . . .	40

	PAGE
<b>Bills of exchange, of days of grace on</b>	<b>40</b>
"    a material alteration renders the instru-	59
ment useless	59
"    what constitutes a material alteration	71
"    are always joint and not several	71
"    no precise form is necessary, but they	71
should contain a distinct order to pay	71
"    under £5, special laws relating to	73
"    how to be drawn	80
"    forms of	80

## C.

<b>Cheque on a banker is a bill of exchange</b>	<b>76</b>
<b>Cheques, their general resemblance to bills</b>	<b>76</b>
"    under 20s. illegal	75
"    should be presented within a reasonable time	76
"    how far they are proofs of payment	76
"    when evidence of existing debts	76
"    each partner may draw	77
"    crossed, why, and how to be done	78
"    must be stamped	17
<b>Consideration, description of, in relation to contracts</b>	<b>21</b>
"    illegal, what, and how far a defence	21

## D.

<b>Debts, what may be a set-off</b>	<b>68</b>
<b>Discharge of the acceptor of a bill is discharge of all other parties</b>	<b>46</b>
<b>Drawee of a bill debtor of the drawer</b>	<b>6</b>
<b>Drawer of a bill is the creditor of the drawee</b>	<b>6</b>

## E.

<b>Example how a bill or note may be satisfied and extinguished</b>	<b>45</b>
---	-----------

## F.

<b>Forgery, what constitutes</b>	<b>62</b>
<b>Forms of bills of exchange</b>	<b>80</b>
<b>Fraud and illegality of consideration, how far a defence</b>	<b>21</b>

## G.

<b>General acceptance</b>	<b>35</b>
<b>General meaning of the words principal and surety</b>	<b>47</b>

## H.

<b>How to ascertain when a person is authorised to act as agent</b>	<b>10</b>
<b>Hasband's right to a set-off when sued for his wife's debts.</b>	<b>69</b>

## I.

	PAGE
Infants cannot be parties to bills of exchange . . .	9
Indorser of a bill, liability of . . .	26
" becoming afterwards indorsee . . .	28
Indorsement of a bill, right to compel when improperly refused . . .	28
Insane persons cannot enter into contracts . . .	9
Interest on bills, when payable . . .	61
I O U, evidence of a debt . . .	79
" not negotiable . . .	79

## J.

Joint note, when so called . . .	71
Joint and several note, why so called . . .	71

## L.

Lien, ceases on taking a bill . . .	34
Loss of bill received for a debt . . .	34

## M.

Married women cannot be parties to bills of exchange . . .	9
Miscellaneous matters connected with the power of parties to enter into contracts . . .	15
" relating to the payment of bills . . .	34
" relating to satisfaction, extinguishment, and suspension of bills of exchange . . .	46
" relating to bills of exchange . . .	73
Money paid under mistake of fact recoverable . . .	63
Meaning and nature of acceptance . . .	35

## N.

Note payable on demand, when considered overdue . . .	31
Notes, <i>see</i> Bank notes and Promissory notes.	
Notes and bills under £5, legal effects respecting . . .	32
Notice of dishonour of a bill necessary, and object of . . .	51
" tenor and form of . . .	52
" who can give an effectual . . .	53
" time within which notice must be given . . .	53
" mode of sending, and evidence of . . .	55
" should be in writing . . .	55
" how to be served in case of death . . .	54
" to one of several is notice to all . . .	56
" why neglect of, exonerates parties to a bill . . .	56
" what circumstance will excuse . . .	57

## P.

Partnerships, on the mutual agency of partners . . .	12
" on the various kinds of . . .	13
" dissolution of . . .	15



	PAGE
Principal and surety, general meaning of the terms	47
Proof of payment of a bill, what is sufficient	44
Promissory note, names and relations of parties thereto	6
"    "    maker of, similar to acceptor of a bill	7

## Q.

Qualified acceptance of a bill	35
--------------------------------	----

## R.

Refusal of payment of bill or note, consequences thereof	41
Release before and after the maturity of a bill	45
Remedy on lost bills or notes	74
Restrictive indorsements on bills, effects of	28
Rights of indorser of overdue bill	30
"    "    of unaccepted bill	30
"    parties giving and receiving forged bills	62
Rules necessary to be observed in appropriation of payments	44

## S.

Sale of bill and note, rights of parties thereto	33
Stamps, New Act	83
Statute of limitation must be pleaded	65
"    "    form of notice in a County Court	65
"    "    how to prevent its operation	66
Sureties, when discharged by taking new bill	49
"    under what circumstances they will remain liable	49
Surety who has paid may sue his principal	50
Suretyship, in relation to bills and notes	48
"    by contracts or guarantees	49

## T.

Table illustrating the different defences treated of	24
--	----

## U.

Under what circumstances sureties will remain liable	49
--	----

## W.

What may be treated as a refusal to accept	36
What warranty is implied in transferring by delivery	29
Who must accept	37
Within what time bills and notes should be presented	41



**CATALOGUE**  
**OF**  
**COMMERCIAL AND OTHER WORKS**

**PUBLISHED AND SOLD BY**

**EFFINGHAM WILSON,**

**Publisher, Printer, Bookseller, Binder, Engraver & Stationer,**

**ROYAL EXCHANGE, LONDON.**

**TO WHICH IS ADDED A LIST OF**

*Valuable Books of Reference essential to Commercial  
Establishments and Public Companies,  
Guide Books for Travellers, &c.*



In addition to the Works enumerated in this Catalogue, the Books of all other Publishers may be had at this Establishment immediately on their publication.

**November, 1878.**

## COMMERCIAL AND OTHER WORKS.

---

### TATE'S MODERN CAMBIST; A MANUAL OF FOREIGN EXCHANGES

**The Modern Cambist:** forming a Manual of Foreign Exchanges in the various operations of Bills of Exchange and Bullion, according to the practice of all Trading Nations; with Tables of Foreign Weights and Measures, and their Equivalents in English and French.

"A work of great excellence. The care which has rendered this a standard work is still exercised, so cause it to keep pace, from time to time, with the changes in the monetary system of foreign nations."—*The Times*.

"Constitutes a work which deserves the high reputation it has justly acquired, both here and on the Continent, as a 'standard authority' with the mercantile world."—*Daily News*.

**Sixteenth Edition.** Enlarged and rewritten. Price 12s., cloth.

---

### TATE'S COUNTING-HOUSE GUIDE TO THE HIGHER BRANCHES OF COMMERCIAL CALCULATIONS,

Exhibiting the methods employed by Merchants, Bankers, and Brokers, for Valuations of Merchandise; Mental Percentages, Interest Accounts in Accounts-Current, Public Funds, Marine Insurances; Standarding of Gold and Silver; Arbitrations of Exchange in Bills, Bullion, and Merchandise; and actual pro-forma statements of British and Foreign Invoices and Account Sales. By WILLIAM TATE.

"This work contains a great number of examples of the various species of calculations which are used in mercantile establishments, and merits the perusal of even those who are versed in these studies. His methods of stating the necessary operations will be found simple and easy of comprehension."—*The Times*.

"Mr. Tate has spared no pains to furnish himself with the best practical data. The Royal Mint, the Bank of England, Lloyd's, the Stock Exchange, as well as the leading Mercantile Establishments, have been had recourse to. The work may be safely referred to as a standard authority on the various matters treated upon."—*Morning Post*.

**Ninth Edition.** Price 7s. 6d., cloth.

Dedicated, by special permission, to the Committee of the Stock Exchange.

**FENN'S**  
**COMPENDIUM OF THE ENGLISH AND**  
**FOREIGN FUNDS,**  
**DEBTS AND REVENUES OF ALL NATIONS;**

Together with Statistics relating to State Finance and Liabilities, Imports, Exports, Population, Area, Railway Guarantees, Municipal Finance and Indebtedness, and all descriptions of Government Securities held and dealt in by investors at Home and Abroad; the Laws and Regulations of the Stock Exchange, &c., the work being so arranged as to render it alike useful to the Capitalist, the Banker, the Merchant, or the Private Individual.

Twelfth Edition, rewritten, with an Appendix, bringing the work down to February, 1876, by ROBERT LUCAS NASH.  
Price 25s., cloth.

The following is a list of the several States, the debts, revenues, and commerce of which are comprised in this work, in which all the foreign moneys are reduced into British currency:—Argentine Confed., Australasia, Austria, Baden, Bavaria, Belgium, Bolivia, Brazil, Buenos Ayres, Canada, Chili, Colombia, Cuba, Danubian Principalities, Denmark, Ecuador, England, France, Germany, Granada (New), Greece, Guatemala, Hamburg, Holland, Honduras, Hungary, India, Italy, Mexico, Netherlands, Paraguay, Peru, Portugal, Prussia, Rika, Rostra, Roumania, Russia, Sardinia, Saxony, Spain, Sweden, Switzerland, Turkey, Uruguay, U.S. of America, Venezuela, West Indies, Wurtemberg.

"This volume contains a variety of well-arranged information, indispensable to every capitalist, banker, merchant, trader, and agriculturist."—*Morning Herald*.

"So much useful matter in any one volume is seldom to be met with."—*The Times*.

**GUMERSALL'S TABLES OF INTEREST, &c.**

Interest and Discount Tables, computed at 2½, 3, 3½, 4, 4½, and 5 per cent., from 1 to 365 days, and from £1 to £20,000; so that the interest or discount on any sum, for any number of days, at any of the above rates, may be obtained by the inspection of one page only. Each Rate occupies eighty pages; the last five of which are devoted to the same number of pounds from 1 to 11 months, and from 1 to 10 years. They are also accompanied with Tables of Time and Brokerage, being altogether a vast improvement on Thompson and others. By T. B. GUMERSALL, Accountant, London.

"This work is pre-eminently distinguished from all others on the same subject by facility of reference, distinctness of type, and accuracy of calculation."—*Bankers' Circular*.

Fourteenth Edition. 1 vol., 8vo (pp. 500), price 10s. 6d., cloth, or strongly bound in calf, with the Rates per Cent. cut in at the foredge, price 16s. 6d.

**WILSON'S LEGAL HANDY BOOKS.**

By JAMES WALTER SMITH, Esq., LL.D., of the Inner Temple;  
Barrister-at-Law.—ONE SHILLING EACH.

**[The Law of]**

1. Bills, Cheques, Notes, and I O U's.
2. Banking; its Customs and Practice.
3. Master and Servant.
4. Private Trading Partnership.
5. Joint-Stock Companies.
6. Public Meetings.
7. Trustees; their Duties and Liabilities. By R. DENNY URLIN, Esq., of the Middle Temple, Barrister-at-Law.
8. Trade Marks. New Law. By JOHN PYM YEATMAN, Esq., Barrister-at-Law.
9. Shipping. By CHAS. STUART SMYTH. Price 2s.
10. Husband and Wife, Marriage and Divorce, Parent and Child. 2s. 6d.

"Dr. Smith has rendered important service to society by the preparation of these concise, clear, and cheap expositions of the law."—*Morning Post*.

**JACKSON'S BOOK-KEEPING.**

A New Check-Journal; combining the advantages of the Day-Book, Journal, and Cash-Book; forming a complete System of Book-keeping by Double-Entry; with copious illustrations of Interest Accounts, and Joint Adventures; and a new method of Book-keeping, or Double-Entry by Single.

By GEORGE JACKSON, Accountant.

Fourteenth Edition, with the most effectual means of preventing Fraud, Error, and Embezzlement, in Cash Transactions, and in the Receipt and Delivery of Goods, &c. Price 5s., cloth.

**ROYLE'S LAWS RELATING TO ENGLISH AND FOREIGN FUNDS, SHARES, AND SECURITIES. THE STOCK EXCHANGE; ITS USAGES AND THE RIGHTS OF VENDORS AND PURCHASERS.**

With 400 References to Acts of Parliament and Decided Cases, and an Analytical Index. By WILLIAM ROYLE, Solicitor. Price 6s.

**ROBINSON'S SHARE AND STOCK TABLES;**

Comprising a set of Tables for Calculating the Cost of any number of Shares, at any price from 1-16th of a pound sterling, or 1s. 3d. per share, to £310 per share in value; and from 1 to 500 shares, or from £100 to £50,000 stock.

Sixth Edition, price 5s., cloth.

**ARGLES' FRENCH LAW OF BILLS OF EXCHANGE, CHEQUES, AND NEGOTIABLE INSTRUMENTS.**

By NAPOLEON ARGLES, English Solicitor, Paris. Price 1s.

**BURGON'S LIFE & TIMES OF SIR THOMAS GRESHAM.**

Including notices of many of his contemporaries. By JOHN WM. BURGON, Esq. Offered at the reduced price of 10s. Published at £1 10s.

**HOARE'S MENSURATION FOR THE MILLION.**

Or, the Decimal System and its applications to the Daily Employments of the Artizan and Mechanic. By CHARLES HOARE.

"This is a palmtaking exposition of the many advantages derivable from the use of decimals; we therefore welcome it with all the cordiality due to those who simplify the process of calculation."—*Practical Mechanic*.

Eleventh Edition. Price 1s., sewed.

**BENEDIOT'S (A) WORD TO MY WIFE.**

Practical Hints in Cookery and Comfort. By A BENEDIOT. Fourth Thousand. Price 6d.

**WILSON'S IMPORTANCE OF PUNCTUALITY.**

On Sheet. Price 6d.

**FOX'S TRUE ART OF BOOK-KEEPING BY SINGLE AND DOUBLE ENTRY.**

In Four Parts. Part 1. Single Entry. By an ACCOUNTANT.  
Price 6d.

**FOX'S ONE HUNDRED GOLDEN RULES (OR AXIOMS) OF ACCOUNT KEEPING.**

By AN ACCOUNTANT. Fourth Edition. Price 6d., sewed.

**FOX'S ONE HUNDRED DEBTOR AND CREDITOR MAXIMS OF ACCOUNT KEEPING.**

Price 6d., sewed.

**DOUBLEDAY'S FINANCIAL AND MONETARY HISTORY.**

A Financial, Monetary, and Statistical History of England, from the Revolution of 1688 to the present time; derived principally from Official Documents. By THOMAS DOUBLEDAY, Author of 'The True Law of Population,' &c. &c.

"A work of absorbing interest and uncommon research. We have tested it minutely, and believe it strictly true, as it is unquestionably clear in its statements."—*Blackwood's Edinburgh Magazine*.

In 1 vol., 8vo. Price £2 2s., cloth. Very scarce.

**RICKARDS' PRACTICAL MINING,**

Fully and familiarly Described. By GEORGE RICKARD.  
Price 2s. 6d., cloth.

**BARRY'S RUSSIAN METALLURGICAL WORKS;**

Iron, Copper, and Gold, concisely described. Price 5s.

**WALTON'S COMPLETE CALCULATOR AND UNIVERSAL READY RECKONER.**

For all numbers from 1 to 80,000, at any rate or price, from One Farthing to Twenty Shillings. Price £3 3s., cloth, 8vo.  
*Very scarce.*

**BOOTH'S TABLES OF SIMPLE INTEREST,**

On a New Plan of Arrangement; by which the Interest of any number of Pounds, from One to a Thousand, for any number of days not exceeding a year, will be found at one view, without the trouble or risk of additions, at any rate per cent. Price £5 5s., 4to. *Very scarce.*

**WILSON'S SHILLING DIARY.**

"The cheapest and best diary ever issued to the public."—*Morning Advertiser*.

Published annually, in cloth. Interleaved, with ruled paper.  
Price 1s. 6d., cloth.

**FERGUSON'S BUYERS' AND SELLERS' GUIDE; OR, PROFIT ON RETURN.**

Showing on one view Net Cost and Return Prices, with a Table of Discount. By ANDREW FERGUSON, Author of 'Tables of Profit, Discount, Commission, and Brokerage.'  
Net Profit on Returns. Price 1s., sewed.

**ELLIS'S RATIONALE OF MARKET FLUCTUATIONS:**

"A compendium of shrewd observations on the nature and causes of fluctuations in market prices, whether they arise from market influences or more general causes. The writer is evidently acquainted practically with business principles and detail, as well as a theoretical student of these subjects, and the work for this reason is the more valuable."

Third Edition, revised. By ARTHUR ELLIS. Price 7s. 6d.

**BOSANQUET'S UNIVERSAL SIMPLE INTEREST TABLES**

Showing the Interest of any sum for any number of days at 100 different rates, from  $\frac{1}{2}$  to 12 $\frac{1}{2}$  per cent. inclusive; also the Interest of any sum for one day at each of the above rates, by single pounds up to one hundred, by hundreds up to forty thousand, and thence by longer intervals up to fifty million pounds. By BERNARD TINDAL BOSANQUET. 8vo, pp. 480. Price 21s., cloth.

**BOSANQUET'S SIMPLE INTEREST TABLES,**

For Facilitating the Calculation of Interest at all rates, from one thirty-second upwards. By BERNARD TINDAL BOSANQUET. Price 5s., cloth.

**FINANCIAL REGISTER (THE) AND STOCK EXCHANGE MANUAL:**

Showing Capital, Dividends, and Prices of the Public Funds, Colonial and Foreign Debts, &c. &c. Published Annually, Price 25s.

**THE LIFE ASSURER'S HANDBOOK AND KEY TO LIFE ASSURANCE.**

Articles on Life Assurance Companies, republished from Articles expressly written for 'The Bullionist.' Second Edition, Enlarged. Price 7s. 6d.

**FAIRLIE'S RAILWAYS OR NO RAILWAYS.**

Narrow Gauge, Economy with Efficiency, v. Broad Gauge, Costliness with Extravagance. By ROBERT F. FAIRLIE. 2s. 6d.

**CLARKE'S SOVEREIGN AND QUASI-SOVEREIGN STATES,**

Their Debts to Foreign Countries. By HYDE CLARKE, V.P.S.S., Sec. Foreign Bondholders' Association. Price 2s.

**LONG'S POPULAR GUIDE TO MATTERS RELATING TO THE INCOME TAX, THE UNINHABITED HOUSE DUTY, AND THE LAND TAX.**

Fourth Thousand, with a Preliminary Chapter. By J. P. A. LONG, Surveyor of Taxes. Price 1s. 6d.

**VINCENT'S LAW OF CRITICISM AND LIBEL.**

A Handbook for Journalists, Authors, and the Libelled. By C. HOWARD VINCENT. Price 2s. 6d.

**CRUMP'S EXCHANGE, YIELD, AND SHARE TABLES,**

Calculated especially to meet the requirements of the new system of Currency in Germany. By ARTHUR CRUMP. Second Edition. Price 10s.



**STOCK EXCHANGE PRICES,**

The Highest and Lowest for 1876, with a Dividend List. An Annual for Investors. Giving the following particulars, viz.—1. Highest and Lowest prices of business done in *every Security* quoted in the Official List for each month during the year 1876. 2. The day of the month when quoted. 3. The Highest and Lowest of *every Security* for the year 1876. 4. The date when quoted. 5. The dividends paid during the last five years, *verified* by reference to the various Agents and Secretaries. 6. Dividends when and where payable. 7. Bank Returns, Prices of Consols, and the Official average of Wheat for the last week in each month in each year since 1864, and other information. Royal 4to, cloth fush, 10s.

**ROUTER'S EXCHANGE TABLES BETWEEN ENGLAND, INDIA, AND CHINA.**

With new Intermediate Rates of thirty seconds of a Penny per Rupee, sixteenths of a Penny per Dollar, and one quarter of a Rupee per Hundred Dollars; also New and Enlarged Tables of Premium and Discount on Dollars, of Bullion, and of indirect Exchanges between England, India, and China. By HENRY ROUTER, late Agent of the Commercial Bank of India, Hong Kong. New Edition. Price £1 10s., cloth.

**ROUTER'S SILK AND TEA TABLES.**

Price 10s., cloth.

**ROUTER'S METRICAL SYSTEM OF WEIGHTS AND MEASURES TABLES.**

Price 4s., cloth.

**ROUTER'S GENERAL INTEREST TABLES;**

For Dollars, Francs, Milreis, &c., adapted to both the English and Indian Currency. At Rates varying from 1 to 12 per cent. On the Decimal System. By HENRY ROUTER. Price 10s. 6d.

**SCHMIDT'S FOREIGN BANKING ARBITRATION;**

Its Theory and Practice. A Handbook of Foreign Exchanges, Bullion, Stocks and Shares, based upon the New Currencies, &c. By HERMANN SCHMIDT. Price 12s.

**COHN'S TABLES OF EXCHANGE BETWEEN ENGLAND, FRANCE, BELGIUM, SWITZERLAND, AND ITALY.**

Converting Francs into Sterling, and Sterling into Francs. Price 10s. 6d., cloth; whole calf, 12s. 6d.

**COHN'S TABLES OF EXCHANGES BETWEEN GERMANY AND ENGLAND,**

By means of which any amount of Reichsmarcs may be converted into Sterling by Seventy-six Rates of Exchange. Cloth. Price 3s.

**MAERTENS' SILK TABLES.**

Showing the cost of Silk per pound, avoirdupois and kilo, as purchased in *Japan* and laid down in London and Lyons. Price 30s.

**MAERTENS' SILK TABLES,**

Showing the cost of Silk per pound, avoirdupois and kilo, as purchased in *Shanghai* and laid down in London and Lyons. Second Edition. Price 30s.

**GOSCHEN'S (THE RT. HON. GEORGE J., M.P.) THEORY OF THE FOREIGN EXCHANGES.**

Ninth Edition. One Volume, 8vo. 6s.

**MICHELL'S TARIFF OF CUSTOMS' DUTIES**

LEVIED on the EUROPEAN FRONTIER of the EMPIRE of RUSSIA and KINGDOM of POLAND, from the 1st (13th) of January, 1869. Translated by T. MICHELL, Her Britannic Majesty's Consul at St. Petersburg, and Revised by the Imperial Russian Department of Trade and Manufactures.

Published for the benefit of the British Seamen's Hospital at Cronstadt. 4to. Price 13s. 6d., in wrapper.

Supplement No. 1, 2s. 6d.

**LEWIS'S TABLES FOR FINDING THE NUMBER OF DAYS,**

From one day to any other day in the same or the following year. By WILLIAM LEWIS. Price 12s. 6d.

**WARD'S SAFE GUIDE TO THE INVESTMENT OF MONEY.**

A TREATISE on INVESTMENTS; being a Popular Exposition of the Advantages and Disadvantages of each kind of Investment, and of the liability to Depreciation and Loss. By ROBERT ARTHUR WARD, Solicitor, Maidenhead, Berkshire.

"Both capitalist and lawyer will find the most useful hints in this volume."—*Legal Observer*.

Fourth Edition, re-written. Price 2s. 6d., cloth.

**HANKEY'S PRINCIPLES OF BANKING:**

Its Utility and Economy. With Remarks on the Working Management of the Bank of England. By THOMSON HANKEY, Esq., M.P., formerly Governor of the Bank of England. One Volume, 8vo. Third Edition. Price 6s., cloth.

**SEYD'S BULLION AND FOREIGN EXCHANGES,**

Theoretically and Practically Considered; followed by a Defence of the Double Valuation, with special reference to the proposed system of Universal Coinage. By ERNEST SEYD. One Volume, 8vo, pp. 700. Price 20s., cloth.

**WILSON'S TIME AND MONEY TABLES FOR CALCULATING SEAMEN'S WAGES.**

Showing the exact Rateable Time, in calendar months and days, from any one day in the year to another; also, the amount of Wages due for such periods, and at any rating, from 10s. up to £50 per annum.

Second Edition. Price 10s., cloth.

**SMITH'S LEGAL FORMS FOR COMMON USE.**

By JAMES WALTER SMITH, Esq., LL.D., of the Inner Temple, Barrister-at-Law.

Ninth Thousand. Price 3s. 6d., cloth.

**WILSON'S AUTHOR'S GUIDE.**

A Guide to Authors; showing how to Correct the Press, according to the mode adopted and understood by Printers. On Sheet. Price 6d.

**RUSSIA'S WORK IN TURKEY:**

A Revelation. From the French of 'Les Responsabilités' of G. Giacometti. Translated by EDGAR WHITAKER. Price 3s.

**PULBROOK'S COMPANIES' ACT, 1862 AND 1867; STAN-  
NARIES ACT, 1869; LIFE ASSURANCE COM-  
PANIES' ACT, 1870.**

With Analytical References, a very Copious Index, and the Rules in Chancery. Pocket Edition. By A. PULBROOK, Solicitor. Price 6s., cloth.

"Likely to have an extensive circulation."—*Standard*.

"Best edition published."—*Mining Journal*.

**PULBROOK'S BALLOT ACT, 1872.**

With Analytical References, and Copious Index. Pocket Edition. By ANTHONY PULBROOK, Solicitor. Limp cloth, 126 pp., with 1500 References. Price 2s.

**PULBROOK'S TREATISE ON COMPANIES LIMITED  
BY GUARANTEE,**

Showing their applicability to Mining and other commercial purposes. By A. PULBROOK, Solicitor. Price 2s. 6d., cloth.

"We especially commend it to consideration."—*Morning Post*.

**GARRATT'S EXCHANGE TABLES.**

To Convert the Moneys of Brazil, the River Plate Ports, Chili, Peru, California, and Lisbon (Milreis and Reis, Dollars and Reals, Dollars and Cents), into British Currency, and vice versâ, at all rates of Exchange that can be required, varying by eighths of a penny. By JOHN and CHARLES GARRATT. Price 10s. cloth.

**SCHULTZ'S UNIVERSAL INTEREST AND GENERAL PERCENTAGE TABLES.**

For the use of Bankers, Merchants, and Brokers, in all parts of the world. Applicable to all Calculations of Interest, Discount, Commission, and Brokerage, on any given amount, in any Currency, from 1 per cent. to 15 per cent. per annum, by One Quarter per cent. Progressively. On the Decimal System. With a Treatise on the Currency of the World, and numerous Examples for Self-instruction. Price 15s.

**SCHULTZ'S UNIVERSAL DOLLAR TABLES.**

Complete United States Edition. Covering all Exchanges between the United States and Great Britain, France, Belgium, Switzerland, Italy, Spain, and Germany.

From \$4.50 Cents to \$5.50 per Pound Sterling, or from 4 Francs 50 Centimes to 5 Francs 50 Centimes per Dollar, or from 4 Pesetas 50 Cents to 5 Pesetas 50 Cents per Dollar, or from \$4.50 to \$5.50 per 20 Gold Marcs. For the use of Bankers, Merchants, and Brokers. Price 25s.

**SCHULTZ'S ENGLISH-GERMAN EXCHANGE TABLES**

From 20 Marks to 21 Marks per £, by .025 Marks per £ progressively. Price 5s.

**SCHULTZ'S UNIVERSAL DOLLAR TABLES.**

Epitome of Rates from \$4.80 to \$4.90 per £, and from 3s. 10d. to 4s. 6d. per \$, with an Introductory Chapter on the Coinages and Exchanges of the World. Price 10s. 6d.

**CROSBIE AND LAW'S TABLES.**

For the Immediate Conversion of Products into Interest, at Twenty-Nine Rates, viz.: From One to Eight per cent. inclusive, proceeding by Quarter Rates, each Rate occupying a single Opening, Hundreds of Products being represented by Units. By ANDREW CROSBIE and WILLIAM C. LAW, of Lloyd's Banking Company, Limited. Price 10s. 6d.

**RICHARDS'S OLIVER CROMWELL:**

An Historical Tragedy, in a Prologue and Four Acts. By ALFRED BATE RICHARDS. Dedicated by permission to THOMAS CARLYLE. Fourth Edition. Price 2s.

**ROSE'S COLUMBUS:**

An Historical Play, in Five Acts. By EDWARD ROSE. Price 2s.

**ADAMS'S QUEEN JANE:**

An Historical Tragedy, in Five Acts. By C. WARREN ADAMS. Price 2s.

**ELWES'S LEGEND OF THE MOUNT: OR, THE DAYS OF CHIVALRY.**

By ALFRED ELWES. With a Frontispiece by ALFRED ELWES, JUN. 1 vol., fcap. 8vo. Price 3s. 6d., cloth.

**ELWES'S THROUGH SPAIN BY RAIL IN 1872.**

One Vol., 8vo. Price 10s. 6d.

**ANSELL'S ROYAL MINT;**

Its Working, Conduct, and Operations, fully and practically explained. Illustrated with Engravings. Third Edition, greatly enlarged, 1 vol. imperial 8vo, price 12s.

**THE CITY OF LONDON DIRECTORY.**

Contents: Conveyance Guide, Streets Guide, Alphabetical Directory, Traders' Guide, Public Companies' Directory, Livery Companies' Guide, Corporation Directory. The whole forming a complete Directory to the City of London. Price 10s. 6d., published annually.

**SHAW'S FIRE SURVEYS;**

A Summary of the Principles to be Observed in Estimating the Risks of Building. By Captain SHAW, of the London Fire Brigade. Cheap Edition. Price 5s.

**WINE:**

An Authoritative Defence of its Use. By N. M., a Graduate of Cambridge University and a Clergyman of the Church of England. Price 2s.

**DUNHAM'S MULTIPLICATION AND DIVISION TABLES,**

From  $\frac{1}{32}$ nd to 10,000,000; adapted to every Calculation. Price 21s.

**DUNHAM'S TABLES.**

Rules and Definitions of Arithmetic, Geometry, Mensuration, and Trigonometry. Price 2s.

**KAECH'S MERCANTILE TABLES.**

Showing the Cost Value of all principal Staples of Indian Produce on the basis of First Cost, at a certain rate of Freight, but different rates of Exchange, together with a *pro forma* Invoice based on actual Charges and relating to each Article, by ALEX. KAECH. Price 6s.

**HAM'S REVENUE AND MERCANTILE YEAR BOOK FOR 1879.**

Contents:—I. Almanack. II. The Laws and Regulations of the Customs. III. Epitome of the Laws and Regulations of Excise, including the Laws governing the sale of Intoxicating Liquors in England, Scotland, and Ireland. IV. Postal Regulations. V. A complete Edition of the Stamp Laws. VI. Income Tax and House Tax. VII. A List of the Statutes of the Session 1878. VIII. Statistics of the Trade and Revenue of the United Kingdom. Price 3s. 6d.

**HAM'S REVENUE AND MERCANTILE VADE-MECUM.**

An Epitome of the Laws, Regulations, and Practice of Customs, Inland Revenue, and Mercantile Marine. Price 12s. 6d.

**HAM'S LAWS RELATING TO BRITISH MERCHANT SHIPPING.**

Containing the whole of the Statutes in force complete, arranged and indexed, with tables showing the titles of all Acts referring to British Shipping, and all repeals up to the end of the Session; together with various important notes and comments. New Edition in the Press.

**PARNELL'S LAND AND HOUSES.**

The Investor's Guide to the Purchase of Freehold and Leasehold Ground Rents, Houses, and Land; Observations on the Management of the same, with Tables. Third Edition, price 1s.

**TABLE OF EQUIVALENT PRICES OF STOCKS.**

Price 1s. 6d.

**COMBE'S (GEORGE) CURRENCY QUESTION CONSIDERED.**

"This pamphlet is a service rendered to the commercial public. No such work has hitherto been attainable. Mr. Combe's pamphlet fulfils everything that could be desired, as it is a concise and logical statement, and will save wading through a mass of contradictory treatises. Its broad and simple doctrines leave no excuse for those who may continue to trouble the community with incessant effusions on this matter."—*The Times*, March 4th, 1856.

Eleventh Edition. Price 2s., cloth.

**THE TENDER TOE:**

Essays on Gout and its Affinities, and the Treatment of the Gouty. By WILLIAM LOMAS, M.D. Price 2s.

**EMSON'S COMPARATIVE TABLE OF FRENCH AND ENGLISH MEASURE,**

Showing at one view the length in yards from one metre to one thousand metres. On card. Price 1s.

**YOUNG'S ROYAL EXCHANGE MARINE INSURANCE TABLES,**

For the use of Brokers, Merchants, &c. Cloth, price 2s.

**TWELVE TRUE TALES OF THE LAW.**

By COPIA FANDI, S.C.L., of the Honorable Society of —'s Inn, Barrister at Law. Cheap Edition. Price 1s.

**BESEMERES' SUCCESS IN INDIA, AND HOW TO ATTAIN IT; WITH THE ROADS TO TAKE AND THE PATHS TO AVOID.**

By JOHN DALY BESEMERES. Price 1s.

---

**MISCELLANEOUS LIST.**

---

**VALUABLE WORKS OF REFERENCE,  
COMMERCIAL, LEGAL, GEOGRAPHICAL,  
AND STATISTICAL.**

---

**ARNOULD'S MARINE INSURANCE.**

A Treatise on the Law of Marine Insurance and Average; with References to the American Cases and the later Continental Authorities. By Sir JOSEPH ARNOULD (Puisne Judge, Bombay).

Fifth Edition, in 2 vols., royal 8vo. Price £3, cloth.

---

**ANDERSON'S PRACTICAL MERCANTILE CORRESPONDENCE.**

A Collection of Modern Letters of Business, containing a Dictionary of Commercial Technicalities.

Twenty-first Edition, revised and enlarged. By WILLIAM ANDERSON. Price 5s.

---

**ADLINGTON'S ANGLO-FRENCH PRODUCE TABLES,**

Transferring the Cost of any Article from Sterling per Cwt. into Francs or Lires (Italian) per 100 Kilogrammes, at Exchanges ranging from 24½ to 32. Price 2s. 6d.

---

**BANK OF ENGLAND (THE), MINIMUM RATES OF DISCOUNT DURING THE PAST 31 YEARS AND THE AVERAGE RATE OF EACH YEAR.**

Price 1s. Published Annually.

---

**BANKING ALMANACK (THE), DIRECTORY YEAR-BOOK, AND DIARY.**

A Parliamentary and complete Banking Directory. Published annually. Price 7s. 6d.

---

**BRADSHAW'S RAILWAY SHAREHOLDERS' MANUAL.**

Published Annually. Price 12s.

---

**BLACKSTONE'S (SIR W.) COMMENTARIES ON THE LAWS OF ENGLAND.**

By CHITTY.—Twenty-first Edition. By HARGRAVE, SWEET, COUCH, and WELSBY. 4 vols., 8vo. Price £4 4s.

**BYLES' LAW OF BILLS OF EXCHANGE, PROMISSORY NOTES, BANK NOTES, AND CHEQUES.**

By the Right Hon. Sir JOHN BARNARD BYLES. Twelfth Edition. Price 25s.

**BRAND'S DICTIONARY OF SCIENCE, LITERATURE, AND ART;**

Comprising the History, Description, and Scientific Principles of every branch of Human Knowledge; with the Derivation and Definition of all the Terms in General Use. Edited by W. T. BRAND, F.R.S.L. and E.; and Rev. GEO. W. COX, M.A.

The Second Edition, revised and corrected; including a Supplement, and numerous Wood Engravings. New edition, 8vo, cloth. Price £3. 3s.

**BROOKE'S TREATISE ON THE OFFICE AND PRACTICE OF A NOTARY IN ENGLAND.**

As connected with Mercantile Instruments and on the Law Merchant, and Statutes relative to the presentment, acceptance, and dishonour of Bills of Exchange, &c., and to various Documents relating to Shipping; with a full Collection of Precedents.

Third Edition. With alterations and additions. In 8vo, boards. Price 21s.

**BAGEHOT'S LOMBARD STREET.**

A description of the Money Market. Sixth Edition. Price 7s. 6d.

**CARTER'S PRACTICAL BOOK-KEEPING,**

Adapted to Commercial and Judicial Accounting, with outlines of Book-keeping for beginners, and sets of books and forms of Accounts for different professions and trades. Fourth Edition. Price 7s. 6d.

**CHITTY ON BILLS OF EXCHANGE AND PROMISSORY NOTES.**

A Treatise on Bills of Exchange, Promissory Notes, Cheques on Bankers, Bankers' Cash Notes, and Bank Notes; with References to the Law of Scotland, France, and America. By JOHN A. RUSSELL, LL.B., and DAVID MACLACHLAN, M.A., Barristers-at-Law.

Tenth Edition, in royal 8vo, cloth. Price £1 8s.

**CRUMP'S KEY TO THE LONDON MONEY MARKET.**

By ARTHUR CRUMP. Sixth Edition. Price 21s.

**CRUMP'S THEORY OF STOCK EXCHANGE SPECULATION.**

Fourth Edition. Price 10s. 6d.



**CRUMP'S ENGLISH MANUAL OF BANKING.**

Second Edition, revised and enlarged. Price 15s.

**EGYPTIAN COMMERCIAL CALCULATING TABLES.**

Compiled by DUKE BAKER and FREDERIC GUY. Price 12s.

**FORTUNATE MEN: HOW THEY MADE MONEY AND WON RENOWN.**

Price 3s. 6d.

**GIFFEN'S STOCK EXCHANGE SECURITIES.**

An Essay on the General Causes of Fluctuations in their Price. By ROBERT GIFFEN. Price 8s. 6d.

**GRANT'S TREATISE ON THE LAW RELATING TO BANKERS AND BANKING COMPANIES.**

Third Edition, with an Appendix containing the Statutes in Force. By ROBERT ALEXANDER FISHER, Esq., Barrister-at-Law. Price 28s.

**GILBART'S PRINCIPLES AND PRACTICE OF BANKING.**

Thoroughly revised and adapted to the Practice of the present day. Price 16s.

**GOODFELLOW'S MERCHANTS' AND SHIPMASTERS' READY CALCULATOR.**

Exhibiting at one View the *solid contents* of all kinds of Packages and Casks. By J. GOODFELLOW. Price 7s. 6d.

**HARBEN'S WEIGHT CALCULATOR.**

From 1 lb. to 15 Tons, at 300 Progressive Rates, from one penny to one hundred and sixty-eight shillings per Hundred Weight. Second Edition. Price 30s.

**HOPKINS' (MANLEY) HANDBOOK OF AVERAGE.**

Third Edition, 1 vol., 8vo. Price 18s.

**HOPKINS' (MANLEY) A MANUAL OF MARINE ASSURANCE.**

One vol., 8vo. Price 18s.

**HOPPUS'S TABLES**

For measuring the Solid Contents of Timber, Stone, &c. Price 3s. 6d.

**HOUGHTON'S MERCANTILE TABLES.**

For ascertaining the value of Goods, bought or sold by the Hundredweight, at any price from one farthing to twenty pounds per Hundredweight; or by the Ton, one shilling to four hundred pounds per Ton. Price £1 1s.

**HARDWICK'S TRADER'S CHECK BOOK.**

For Buying and Selling by the Hundred Weight, Ton, or by Measure, &c. Price 2s. 6d.

**INWOOD'S TABLES**

For the Purchasing of Estates, Freehold, Copyhold, or Leasehold, Annuities, Advowsons, &c., and for the Renewing of Leases, held under Cathedral Churches, Colleges, or other corporate bodies, for terms of Years; also for Valuing Reversionary Estates, &c.

Nineteenth Edition. 12mo, boards. Price 8s.

**JEVONS'S MONEY AND THE MECHANISM OF EXCHANGE.**

Price 5s.

**KING'S INTEREST TABLES,**

Calculated at Five per cent, exhibiting at one glance the interest of any sum, from one pound to three hundred and sixty-five pounds; and (advancing by hundreds) to one thousand pounds; and (by thousands) to ten thousand pounds; from one day to three hundred and sixty-five days. Also, Monthly Interest Tables, Yearly Interest Tables, and Commission Tables. Price 7s. 6d.

**LONDON BANKS, CREDIT, DISCOUNT, AND FINANCE COMPANIES.**

Their Directors, Managers, Capitals and Reserve Funds and Dividends. Published twice a year. Price 2s. 6d.

**LAURIE'S UNIVERSAL EXCHANGE TABLES;**

Showing the Value of the Coins of every Country interchanged with each other, at all rates of Exchange, from one Coin to one million Coins. By JAMES LAURIE. Price 42s., very scarce.

**LAURIE'S HIGH-RATE TABLES OF SIMPLE INTEREST,**

At 5, 6, 7, 8, 9 and  $\frac{1}{2}$  per cent. per annum, from 1 day to 100 days, 1 month to 12 months. Also copious Tables of Commission or Brokerage, from one-eighth to ten per cent. By JAMES LAURIE. Price 7s.

**LAXTON'S BUILDERS' PRICE BOOK,**

Published Annually. Price 4s.

**LAWSON'S HISTORY OF BANKING.**

Second Edition. One Volume 8vo. (Scarce.) 35s.

**LEE'S LAWS OF SHIPPING AND INSURANCE.**

Edited and thoroughly revised to the present time by JOHN C. BIGHAM, Barrister-at-Law. Tenth Edition. One Volume. Price 18s.

**LEVI'S COMMERCIAL LAW.**

The Commercial Law of the World; or the Mercantile Law of the United Kingdom, compared with the Codes and Laws of Commerce of Foreign Countries. By LEON LEVI, Esq. 2 vols. Price 35s.

**LOUIS'S ANGLO-FRENCH CALCULATOR;**

A Ready Reckoner for facilitating Trade with France. Price 1s.

**LYON'S LAW OF BILLS OF SALE;**

With an Appendix of Precedents and Statutes. By GEORGE EDWARD LYON, Esq., Barrister-at-Law. Second Edition. Price 3s. 6d.

**MCARTHUR'S POLICY OF MARINE INSURANCE POPULARLY EXPLAINED.**

With a Chapter on Occasional Clauses. Second Edition. Price 3s. 6d.

**MARTIN'S STATESMAN'S YEAR BOOK;**

A Statistical and Historical Annual of the States of the Civilised World for Politicians and Merchants. Revised after Official Returns. Price 10s. 6d. Published Annually.

**MARTIN'S HISTORY OF LLOYD'S AND MARINE INSURANCE IN GREAT BRITAIN.**

Price 14s.

**MACLEOD'S ELEMENTS OF BANKING.**

Price 7s. 6d.

**MACLEOD'S ECONOMICS FOR BEGINNERS.**

Price 2s. 6d.

**M'CULLOCH'S DICTIONARY, PRACTICAL, THEORETICAL, AND HISTORICAL, OF COMMERCE AND COMMERCIAL NAVIGATION.**

Illustrated with Maps and Plans. By J. R. M'CULLOCH, Esq. New Edition (1871), corrected, enlarged, and improved, including a New Supplement. 8vo, cloth. Price £3 3s.; or £3 10s. half-bound in Russia, with flexible back.

**M'CULLOCH'S DICTIONARY, GEOGRAPHICAL, STATISTICAL, AND HISTORICAL,**

Of the various Countries, Places, and Principal Natural Objects in the World. By J. R. M'CULLOCH, Esq. Illustrated with Six large Maps.

New Edition, with a Supplement, comprising the Population of Great Britain from the Census of 1851. 4 vols., 8vo, cloth. Price £4 4s.—The SUPPLEMENT separately, price 2s. 6d.

**MERCHANT SHIPPERS (EXPORT) OF LONDON, BIRMINGHAM, WOLVERHAMPTON, AND WALSALL;**

With their respective Trading Ports and the Class of Goods they customarily Ship, Alphabetically Arranged. Price 12s.

**NICHOLSON'S SCIENCE OF EXCHANGES.**

Fourth Edition. Revised and Enlarged. Price 5s.

**PRICE'S (BONAMY) CURRENCY AND BANKING.**

Price 6s.

**POOR'S MANUAL OF THE RAILROADS OF THE UNITED STATES,**

Showing their Mileage, Stocks, Bonds, Cost, Traffic, Earnings, Expenses, and Organizations, with a Sketch of their Rise, Progress, Influence, &c. Together with an Appendix, containing a full Analysis of the Debts of the United States and of the several States, published Annually. Price 24s.

**POOR'S MONEY AND ITS LAWS.**

Embracing a History of Monetary Theories and a History of the Currencies of the United States. By HENRY V. POOR. Price 21s.

**SHELTON'S TABLES FOR ASCERTAINING THE ENGLISH PRICES OF FRENCH GOODS.**

To which is added a Revised Scale of French and English Measures. Price 2s. 6d.

**SIMMONDS'S DICTIONARY OF TRADE PRODUCTS,**

Commercial and Manufacturing; with the Moneys, Weights, and Measures of all Nations. Price 7s. 6d., half-bound.

**SIMMOND'S COMMERCIAL PRODUCTS OF THE SEA;**

or, Marine Contributions to Food, Industry, and Art. By P. L. SIMMONDS. Price 16s.

**SKINNER'S STOCK EXCHANGE YEAR BOOK.**

Published Annually, Price 5s.

**SMITH'S (ADAM) WEALTH OF NATIONS.**

Edited by M'CULLOCH. 1 vol., 8vo. Price 16s.

**SMITH'S COMPENDIUM OF MERCANTILE LAW.**

One Volume, royal 8vo. Price £1 16s.

**STEVENS ON THE STOWAGE OF SHIPS AND THEIR CARGOES:**

With information regarding Freights, Charter-parties, &c. Sixth Edition, price 21s.

**STONEHOUSE'S PROFIT TABLE FOR INVESTMENTS.**

Showing the Actual Profit per cent. per annum to be derived from any Purchase or Investment.

Price 1s. 6d.

**SCHONBERG'S CHAIN RULE.**

A Manual of Brief Commercial Arithmetic: being an easy, simple, and efficient auxiliary in the working of difficult and complicated problems. Price 1s.

**TELEGRAPH CODE (INTERNATIONAL)**

Compiled for the use of Bankers, Merchants, Manufacturers, Contractors, Brokers, and Sharebrokers, for the Economical and Secret Transmission of Mercantile Telegrams. Price 25s.

**THOMAS'S INVESTORS' HANDBOOK:**

Containing full and reliable Information with regard to every description of Investment. By CHARLES THOMAS, F.S.A., F.G.S. Price 10s. 6d.

**EVERY MAN'S OWN LAWYER.**

A Handybook of the Principles of Law and Equity, comprising the Rights and Wrongs of Individuals, Landlord and Tenant, Sales and Purchases, Master and Servant, Workmen and Apprentices, Elections and Registrations, Libel and Slander, Mercantile and Commercial Laws, Contracts and Agreements, Railways and Carriers, Companies and Associations, Partners and Agents, Bankruptcy and Debtors, Trade Marks and Patents, Husband and Wife, Dower and Divorce, Executor and Trustees, Heirs, Devisees, and Legatees, Poor Men's Law Suits, Game and Fishery Laws, Parish and Criminal Law, Forms of Wills, Agreements, Bonds, Notices, &c., &c. By a BARRISTER. Thirteenth Edition. Price 6s. 8d.

**URE'S DICTIONARY OF ARTS, MANUFACTURES, AND MINES.**

Containing a clear Exposition of their Principles and Practice. By ANDREW URE, F.R.S., M.G.S., M.A.S. Lond.; M. Acad. N.L. Philad.; S. Ph. Soc. N. Germ. Hanov.; Mulii, &c. &c. Edited by ROBERT HUNT, F.R.S.

New Edition, corrected. 3 vols., 8vo. with nearly 2000 Engravings on wood. Price £5 5s., cloth.

**WADE'S CABINET LAWYER.**

A Popular Digest of the Laws of England, with the Criminal Law of England and a Dictionary of Law Terms, &c.

A New Edition. Fcap. 8vo. Price 9s., cloth.

**WARREN'S BLACKSTONE.**

Blackstone's Commentaries, systematically abridged and adapted to the existing state of the Law and Constitution, with great additions. By SAMUEL WARREN, Esq., Q.C. 1856.

Second Edition, in post 8vo, cloth. Price 18s.

**WILLIAMS AND LAFONT'S FRENCH AND ENGLISH COMMERCIAL CORRESPONDENCE.**

A Collection of Modern Mercantile Letters in French and English, with their Translation on opposite pages. Second Edition. Price 4s. 6d.

**BLACK'S TOURIST'S GUIDES.**

	<i>s.</i>	<i>d.</i>
ENGLAND. . . . .	10	6
SCOTLAND . . . . .	8	6
WALES . . . . .	5	0
IRELAND . . . . .	5	0
WHERE SHALL WE GO? A Guide to the Watering Places of the British Islands	3	0
CHANNEL ISLANDS, JERSEY, GUERNSEY, ALDERNEY . . . . .	3	6
DORSET, DEVON, AND CORNWALL . . . . .	5	0
ENGLISH LAKES, including the Geology of the District . . . . .	3	6
ISLE OF WIGHT . . . . .	1	6
LONDON AND ENVIRONS . . . . .	3	6

*These Guides are profusely Illustrated, and contain excellent  
Maps.*

**BAEDEKER'S CONTINENTAL GUIDE BOOKS.**

- BELGIUM AND HOLLAND. With 3 Maps and 14 Plans, 5s.
- THE RHINE FROM ROTTERDAM TO CONSTANCE.  
With 15 Maps and 16 Plans, 5s.
- NORTHERN GERMANY. With 11 Maps and 27 Plans, 5s.
- SOUTH GERMANY AND AUSTRIA. With 11 Maps and 16 Plans, 8s.
- SWITZERLAND. With 24 Maps, 10 Plans, and 7 Panoramas, 7s.
- PARIS AND ITS ENVIRONS. With 2 Maps and 19 Plans, 5s.
- NORTHERN ITALY AND CORSICA. With 6 Maps and 16 Plans, 6s.
- CENTRAL ITALY AND ROME. With 3 Maps and 8 Plans, 6s.
- SOUTHERN ITALY, SICILY, MALTA, LIPARI ISLANDS, CARTHAGE, AND ATHENS. With 6 Maps and 7 Plans, 6s.
- TRAVELLER'S MANUAL OF CONVERSATION, English, French, German, and Italian, 3s.
- LONDON AND ITS ENVIRONS, including Brighton, the Isle of Wight, etc. With 4 Maps and 10 Plans. 5s.

## MURRAY'S FOREIGN AND ENGLISH HANDBOOKS.

### I.—THE CONTINENT, &c.

**HANDBOOK**—TRAVEL TALK, in English, French, German, and Italian, adapted for Englishmen Abroad, or Foreigners in England. 18mo, 3s. 6d.

**HANDBOOK**—HOLLAND, Belgium, and the Rhine to Mayence. Post 8vo, 6s.

**HANDBOOK**—NORTH GERMANY, and the Rhine to Switzerland. Map. Post 8vo, 10s.

**HANDBOOK**—SOUTH GERMANY, The Tyrol, Bavaria, Austria, Salzburg, Styria, Hungary, and the Danube from Ulm to the Black Sea. Map. Post 8vo, 10s.

**HANDBOOK**—SWITZERLAND, The Alps of Savoy and Piedmont. Maps. Post 8vo, 9s.

**HANDBOOK**—FRANCE, Normandy, Brittany, The French Alps, Dauphine, Province, and the Pyrenees. Maps. 2 vols., post 8vo, 7s. 6d. each.

**HANDBOOK**—SPAIN, Andalusia, Grenada, Madrid, &c. With Supplement, containing Inns and Railways, &c., 1861. Maps. 2 vols. Post 8vo, 24s.

**HANDBOOK**—PORTUGAL, Lisbon, &c. Map. Post 8vo, 12s.

**HANDBOOK**—NORTH ITALY, Piedmont, Nice, Lombardy, Venice, Parma, Modena, and Romagna. Maps. Post 8vo, 10s.

**HANDBOOK**—CENTRAL ITALY, Lucca, Tuscany, Florence, Umbria, The Marches, and the Patrimony of St. Peter. Map. Post 8vo, 10s.

**HANDBOOK—ROME AND ITS ENVIRONS.** Map.  
Post 8vo, 10s.

**HANDBOOK—SOUTH ITALY,** Two Sicilies, Naples, Pompeii, Herculaneum, Vesuvius, Abruzzi, &c. Maps. Post 8vo, 10s.

**HANDBOOK—SICILY,** Palermo, Messina, Catania, Syracus, Etna, and the Ruins of the Greek Temples. Plans, post 8vo, 12s.

**HANDBOOK—EGYPT,** The Nile, Alexandria, Cairo, Thebes, and the Overland Route to India. Map. Post 8vo, 15s.

**HANDBOOK—GREECE,** The Ionian Islands, Athens, Albania, Thessaly, and Macedonia. Maps. Post 8vo, 15s.

**HANDBOOK—TURKEY IN ASIA—**Constantinople, The Bosphorus, Dardanelles, Brousa, and Plain of Troy, Asia Minor, The Islands of the *Ægean*, Crete, Cyprus, Smyrna and the Seven Churches, Coasts of the Black Sea, Armenia, Mesopotamia, &c. Map. Post 8vo, 15s.

**HANDBOOK—DENMARK,** Schleswig Holstein, Copenhagen, Jutland, and Iceland. Map. Post 8vo, 6s.

**HANDBOOK—SWEDEN,** Stockholm, Upsala, Gothenburg, the Shores of the Baltic, &c. &c. Post 8vo, 6s.

**HANDBOOK—NORWAY,** Christiania, Bergen, Trondhjem, the Fjelds and Fjords. Map. Post 8vo, 9s.

**HANDBOOK—RUSSIA,** St. Petersburg, Moscow, Finland, &c. Maps. Post 8vo, 18s.

**HANDBOOK—INDIA,** Bombay, and Madras. Map. 2 vols. Post 8vo, 12s. each.

**HANDBOOK—HOLY LAND,** Syria, Palestine, Sinai, Edom, and the Syrian Desert. Maps. Post 8vo, 20s.

**HANDBOOK—PARIS AND ITS ENVIRONS.** Map.  
Post 8vo. 3s. 6d.



II.—ENGLAND.

**HANDBOOK—MODERN LONDON.** Map. 16mo, 3s. 6d.

**HANDBOOK—ENVIRONS OF LONDON.** An account, from personal visits, of every town and village within a circle of twenty miles round the Metropolis. 2 vols. Crown 8vo, 21s.

**HANDBOOK—EASTERN COUNTIES—Essex, Cambridge, Suffolk, and Norfolk.** Map. Post 8vo, 12s.

**HANDBOOK—KENT.** Map. Post 8vo, 7s. 6d.

**HANDBOOK—SUSSEX.** Map. Post 8vo, 6s.

**HANDBOOK—SURREY, HANTS, AND THE ISLE OF WIGHT.** Map. Post 8vo, 10s.

**HANDBOOK—BERKS, BUCKS, AND OXFORDSHIRE.** Map. Post 8vo, 7s. 6d.

**HANDBOOK—WILTS, DORSET, AND SOMERSET.** Map. Post 8vo, 10s.

**HANDBOOK—DEVON AND CORNWALL.** Map. Post 8vo, 12s.

**HANDBOOK—NORTH AND SOUTH WALES.** Maps. 2 vols. Post 8vo, 7s. each.

**HANDBOOK—GLOUCESTER, HEREFORD, AND WORCESTER.** Map. Post 8vo, 9s.

**HANDBOOK—DERBY, NOTTS, LEICESTER, AND STAFFORD.** Map. Post 8vo, 9s.

**HANDBOOK—SHROPSHIRE, CHESHIRE and LANCASHIRE.** Map. 8vo, 10s.

**HANDBOOK—YORKSHIRE.** Map and Plans. Post 8vo, 12s.

**HANDBOOK—DURHAM AND NORTHUMBERLAND.** Map. Post 8vo, 9s.

**HANDBOOK—WESTMORELAND AND CUMBERLAND.** Map. Post 8vo, 6s.

**HANDBOOK—SCOTLAND.** Maps and Plans. Post 8vo, 9s.

**HANDBOOK—IRELAND.** Map. Post 8vo, 12s.

### **Garratt's Exchange Tables,**

To convert the Moneys of Brazil, the River Plate Ports, Chili, Peru, California, and Lisbon (Milreis and Reis, Dollars and Reals, Dollars and Cents) into British Currency, and vice versâ, at all rates of Exchange that can be required, varying by eighths of a penny. By JOHN and CHARLES GARRATT. Price 10s., cloth.

---

### **Ward's Safe Guide to the Investment of Money.**

A TREATISE on INVESTMENTS; being a Popular Exposition of the Advantages and Disadvantages of each kind of Investment, and of the liability to Depreciation and Loss. By ROBERT ARTHUR WARD, Solicitor, Maidenhead, Berkshire.

"Both capitalist and lawyer will find the most useful hints in this volume."—*Legal Observer.*

Fourth Edition. Price 2s. 6d., cloth.

---

### **Cohn's Tables of Exchange between England, France, Belgium, Switzerland, and Italy,**

Converting Francs into Sterling, and Sterling into Francs. Price 10s. 6d.

---

### **Cohn's Tables of Exchange between Germany and England,**

By means of which any amount of Reichsmarcs may be converted into Sterling by Seventy-six Rates of Exchange. By M. COHN. Price 3s.

---

### **Bosanquet's Universal Simple Interest Tables,**

Showing the Interest of any sum for any number of days at 100 different rates, from  $\frac{1}{4}$  to  $12\frac{1}{2}$  per cent. inclusive; also the Interest of any sum for one day at each of the above rates, by single pounds up to one hundred, by hundreds up to forty thousand, and thence by longer intervals up to fifty million pounds—with an additional Table showing the Interest of any number of pounds for one quarter, half-year, or year, at each of the above rates, less income tax from one penny to one shilling in the pound. By BERNARD TINDAL BOSANQUET. 8vo, pp. 480. Price 21s., cloth.

---

### **Bosanquet's Simple Interest Tables,**

For Facilitating the Calculation of Interest at all rates, from One Thirty-second upwards. By BERNARD TINDAL BOSANQUET. Price 5s., cloth.

---

### **Pulbrook's Companies Acts, 1862 and 1867, Stan- naries' Act, 1869, Life Assurance Companies Act, 1870, &c.,**

With Analytical References, a very Copious Index, and the Rules in Chancery. Pocket Edition. By A. PULBROOK, Solicitor. Price 6s., cloth.

---

London: EFFINGHAM WILSON, Royal Exchange.

**Ham's Revenue and Mercantile Year Book for 1879.**  
Contents:—I. Almanack. II. The Laws and Regulations of the Customs, including British and Colonial Tariffs. III. Epitome of the Laws and Regulations of Excise, including the Laws governing the sale of Intoxicating Liquors in England, Scotland, and Ireland. IV. Postal Regulations. V. Epitome of the Stamp Laws. VI. Income Tax and House Tax. VII. A List of the Statutes of the Session 1878. VIII. Statistics of the Trade and Revenue of the United Kingdom. Published annually. Price 3s. 6d.

**Ham's Revenue and Mercantile Vade Mecum.**  
An Epitome of the Laws, Regulations, and Practice of Customs, Inland Revenue, and Mercantile Marine. 12s. 6d.

**Lewis's Tables for Finding the Number of Days,**  
From one day to any other day in the same or the following year.  
By WILLIAM LEWIS. Price 12s. 6d.

**Tate's Modern Cambist.**  
A Manual of Foreign Exchanges. The Modern Cambist: forming a Manual of Foreign Exchanges in the various operations of Bills of Exchange and Bullion, according to the practice of all trading nations; with Tables of Foreign Weights and Measures, and their equivalents in English and French.  
Sixteenth Edition, with extensive alterations and additions.  
Price 12s., cloth.

**Tate's Counting-House Guide to the Higher Branches of Commercial Calculations,**  
Exhibiting the methods employed by Merchants, Bankers, and Brokers, for Valuations of Merchandise; Mental Per-Centages, Interest Accounts in Accounts-Current, Public Funds, Marine Insurances; Standarding of Gold and Silver; Arbitrations of Exchange in Bills, Bullion, and Merchandise; and actual Pro-forma Statements of British and Foreign Invoices and Account Sales. By WILLIAM TATE.  
Ninth Edition. Price 7s. 6d., cloth.

**Shaw's Fire Surveys.**  
A Summary of the Principles to be Observed in Estimating the Risks of Building. By CAPTAIN SHAW, of the London Fire Brigade. Cheap Edition, price 5s.

**Jackson's Book-keeping.**  
A New Check Journal; combining the advantages of the Day-Book, Journal, and Cash Book; forming a complete system of Book-keeping by Double Entry; with copious illustrations of Interest Accounts, and Joint Adventures; and a new method of Book-keeping, or Double Entry by Single. By GEORGE JACKSON, Accountant, London.

"We can conscientiously add our meed of approval to that of the many who have already preceded us in the same task, and strongly recommend it to general adoption."—*Athenæum*.

Fourteenth Edition, with the most effectual means of preventing Fraud, Error, and Embezzlement in Cash Transactions, and in the Receipt and Delivery of Goods, &c. Price 5s., cloth.

London: EFFINGHAM WILSON, Royal Exchange.

### **Gumersall's Tables of Interest, &c.**

Interest and Discount Tables, computed at 2½, 3, 3½, 4, 4½, and 5 per cent., from 1 to 365 days, and from £1 to £20,000; so that the Interest or Discount on any sum, for any number of days, at any of the above Rates, may be obtained by the inspection of one page only. Each Rate occupies eighty pages, the last five of which are devoted to the same number of pounds from 1 to 11 months, and from 1 to 10 years. They are also accompanied with Tables of Time and Brokerage, being altogether a vast improvement on Thompson and others.  
By T. B. GUMERSALL.

"This work is pre-eminently distinguished from all others on the same subject by facility of reference, distinctness of type, and accuracy of calculations."—*Banker's Circular*.

Fourteenth Edition, in 1 vol. 8vo (pp. 500), price 10s. 6d., cloth; or strongly bound in calf, with the Rates per cent. cut in at the fore-edge, price 16s. 6d.

### **Long's Popular Guide to the Income Tax, the Inhabited House Duty, and the Land Tax.**

By J. P. A. LONG, Surveyor of Taxes. Fourth Thousand, price 1s. 6d.

### **The Tender Toe: Essays on Gout.**

By WILLIAM LOMAS, M.D., M.R.C.P. Price 2s.

### **Vincent's Law of Criticism and Libel.**

A Handbook for Journalists, Authors, and the Libelled. By C. HOWARD VINCENT, Esq., Barrister-at-Law. Price 2s. 6d.

### **NOTICE.**

Twelfth Edition, re-written, with an Appendix bringing the Work down to February, 1876, price 25s., dedicated by special permission to the Committee of the Stock Exchange.

### **Fenn's Compendium of the English and Foreign Funds, Debts, and Revenues of all Nations.**

Together with Statistics relating to State Finance and Liabilities, Imports, Exports, Population, Area, Railway Guarantees, Municipal Finance and Indebtedness, and all descriptions of Government Securities held and dealt in by Investors at Home and Abroad; the Laws and Regulations of the Stock Exchange, &c.; the work being so arranged as to render it alike useful to the Capitalist, the Banker, the Merchant, or the Private Individual.

Twelfth Edition, rewritten by ROBERT LUCAS NASH.

"This volume contains a variety of well-arranged information, indispensable to every capitalist, banker, merchant, trader, and agriculturist."—*Morning Herald*.

"So much useful matter in so small a compass is seldom to be met with."—*The Times*.

London :

Exchange.